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THE  
CANADIAN LAWYER

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A HANDY BOOK OF THE LAWS AND OF LEGAL  
INFORMATION FOR THE USE OF

BUSINESS MEN, FARMERS, MECHANICS  
AND OTHERS IN CANADA

CONTAINING PLAIN AND SIMPLE INSTRUCTIONS TO ALL CLASSES IN  
TRANSACTIONING BUSINESS ACCORDING TO LAW, WITH LEGAL  
FORMS FOR DRAWING NECESSARY PAPERS.

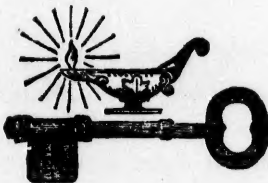
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COMPILED BY  
A BARRISTER-AT-LAW

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SECOND EDITION—ENLARGED.

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TORONTO;  
CARSWELL & CO., PUBLISHERS,

1887

Entered according to Act of Parliament of Canada, in the year one thousand eight hundred and eighty-seven, by CARSWELL & Co., in the office of the Minister of Agriculture.

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28/6/90

PRINTED BY  
MOORE & Co., LAW PRINTERS,  
20 ADELAIDE ST. EAST,  
TORONTO

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## PREFATORY.

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**T**his little manual is believed to be the first of its kind to furnish to the public a compendium—simple and concise, as well as accurate, in its style and arrangement—of the most important provisions of the laws of all the Provinces of Canada in which the general principles of English law prevail. It is printed as a ready reference guide for commercial men, farmers, mechanics and others, in the every day business transactions of life. It does not pretend



to make its readers lawyers, or to enable them to dispense entirely with the advice of the legal profession when matters of real difficulty arise. But it does pretend to furnish, upon the subjects of which it treats, information which will enable an ordinary business man to solve for himself a large proportion of the legal questions which are met with in his business, without the necessity of his applying to a lawyer.

A busy man has neither the time nor the money to refer to a solicitor every day for advice. Cases frequently arise, also, in which he must, of necessity, make up his mind and act, before he can possibly have an opportunity to consult a lawyer. A work like the present, ready at hand, easy of reference, will be found to save each year to its owner, ten times its cost.

The success which attended the publication of the previous edition of this work, and the ready sale of that large edition, encouraged the publishers to lose no time in responding to the general demand for a second edition. In doing so, it was thought best to enlarge the work—many portions of which have, for the present edition, been entirely rewritten—and to employ the best professional talent to make it what they desired, **A KEY TO THE LAWS.**

Of the immense value of a well-prepared manual of this nature, there can be no question. Wrongs are suffered and money lost every day because people generally are unacquainted with their legal rights, or means of redress. One half of the law-suits

which come before the Courts are brought about because some person was ignorant of a simple fact of law which he should have known ; and it is undeniable that an acquaintance with the elementary principles of law would enable many a man to steer entirely clear of litigation.

To preserve this work within the dimensions of a hand-book, and yet comprise in it a reference to all subjects of a useful nature, has required no little labour.

Throughout the book technical terms and expressions have been, as far as possible, eschewed, and plain and simple language employed. A glossary of law-terms is appended to explain words the use of which could not be avoided.

In the present edition the law is brought down to the beginning of the present year.

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# THE CANADIAN LAWYER.

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## ADMINISTRATORS.

AN ADMINISTRATOR (or, if a female, *administratrix*.) is a person appointed by a Surrogate Court, or other proper authority, to take charge of the goods and estate of a person who has died without a will, to distribute it according to law.

An administrator is sometimes appointed even where a will is left. If the will names no executor, an administrator *with the will annexed*, must be appointed ; if a single executor die before the estate is wound up, or refuse to act, an administrator *of the goods not administered* may be appointed. Also, if a single administrator die, an administrator *of the goods not administered* must act.

Where administration is sought by different persons, the laws of the various Provinces will be found to establish the order of preference between them. Administration will not be granted to those subsequent in priority until those prior have been cited before the Court and disclaimed, or waived their rights. Usually a husband has the first right to administer to the estate of his deceased wife, and a widow to that of her deceased husband ; after these, the next of kin have the prior right to Letters of Administration ; but a creditor

of deceased may obtain them if they all disclaim, or any other proper person in the discretion of the Court.

Before Letters of Administration are granted, proof must be filed in the Surrogate or other Court granting them verifying the death, that search has been made for a will and none found, and that none is believed to exist; that the deceased has personal property within the jurisdiction of the Court; and that the applicant has a right to demand the administration. In most jurisdictions an inventory of the personal property must also be filed, with a computation of its sworn value. This is partly for the purpose of fixing the amount of the bond which the administrator and his sureties (usually two) are required to execute and file in the Court, before the Letters issue.

After the Letters have issued, the first duty of the administrator is to take into his custody the personal property, books and papers of the deceased, and ascertain fully what are the assets of the deceased in the shape of goods, moneys and securities for money on hand, and book debts. A careful appraised inventory of these should be made, the debts realized upon, and other assets converted into cash if necessary to pay debts. An inventory of the liabilities of the estate should also be made out, and, if it be suspected that other liabilities which do not appear on the books, or of which the administrator is ignorant, exist, these should be advertised for by the administrator, to protect himself. For the first duty of an administrator is to pay the debts, and he has no right to distribute any property among the next of kin until the debts are paid. If sufficient assets exist, the debts are paid in full; if not, rateably. In Ontario and some other Provinces,



an administrator who advertises for debts, may distribute, after a reasonable time, having reference only to claims of which he has notice. Should other claims be sent in after his distribution, he cannot be sued for them.

The debts being paid, together with the funeral expenses and expenses of administration (which form a first charge upon the assets), the estate may then be divided among the widow and next of kin. The administrator may then pass his accounts before the Court which appointed him.

The authority of the administrator does not extend beyond the jurisdiction of the Court which appoints him. If assets exist beyond such jurisdiction, he, or some other person, may apply for administration there, in order to reach them. The chief administration should be in the jurisdiction where the deceased had his domicile at the time of his death. The other administrations are called *ancillary*.

In Ontario, by "*The Devolution of Estates Act, 1886*," the following statutory provisions apply to the estates of persons dying on or after the 1st July, 1886. Upon the death of such persons, their estates in fee simple, or chattels real, notwithstanding any disposition by will, devolve upon and become vested in their legal personal representative, subject to the payment of their debts; and, so far as not disposed of by deed, will, or contract, are to be distributed as personal property, subject to the provisions of the Act. Under this statute, where a general administration is applied for, the application, or petition, and the affidavit in support of it, must show the particulars of the real estate of the deceased, and its value, or probable value; and the

amount of the security to be given must have reference to such value in addition to the value of the rest of the estate of the deceased. The administrator, or other legal personal representative, has power to dispose of, and otherwise deal with, all real property vested in him by the Act, as though the same were personal property.

In Manitoba, lands are now to be treated, as regards descent, as chattels real; and they pass to the executor or administrator of the person dying seized, as personal estate.

The forms appended are those in common use in Ontario. Usually, printed forms of all necessary administration papers may be obtained of the Court to which application for the Letters is made.

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### FORMS.

#### *Petition for Letters of Administration.*

Unto the Surrogate Court of the County of \_\_\_\_\_  
 The petition of \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the  
 County of \_\_\_\_\_, humbly sheweth:

1. That (*name of intestate*) late of the \_\_\_\_\_ of \_\_\_\_\_  
 in the County of \_\_\_\_\_, deceased, died on or about the \_\_\_\_\_  
 day of \_\_\_\_\_ in the year of our Lord one thousand  
 eight hundred and \_\_\_\_\_ at \_\_\_\_\_ in the County of \_\_\_\_\_  
 , and that the said deceased at the time of his death  
 had his fixed place of abode at the said \_\_\_\_\_  
 in the said County of \_\_\_\_\_.

2. That the said deceased died without having left any Will,  
 Codicil or Testamentary Paper whatever, and your Petitioner is  
 (*his widow, or next of kin, etc.*)

3. That the Personal Estate and Effects of the said deceased which he in any way died possessed of, or entitled to, and for and in respect to which Letters of Administration are requested to be granted, are of or about the value of \_\_\_\_\_ dollars, to the best of your Petitioner's knowledge, information and belief.

Wherefore, your Petitioner prays that administration of the Personal Estate and Effects of the said deceased may be granted and committed to him by this honourable Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

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*Administration Bond.*

Know all men by these presents, that we (*names and additions of administrator and his sureties*) are jointly and severally bound unto (*name of Surrogate Judge*), the Judge of the Surrogate Court of the County of \_\_\_\_\_, in the sum of \_\_\_\_\_ Dollars, to be paid to the said (*name of Surrogate Judge*) or the Judge of the said Court for the time being; for which payment well and truly to be made we bind ourselves and each of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our Seals, dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

The condition of this obligation is such that if the above named (*name of administrator*) the administrator of all the personal estate and effects, rights and credits of (*name of intestate*) late of the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_, deceased, (who died on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and eighty \_\_\_\_\_) do, when lawfully called on in that behalf, make or cause to be made a true and perfect Inventory of all and singular the personal estate and effects, rights and credits of the said deceased which have or shall come into the hands, possession or knowledge of the said (*administrator*) or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited unto the Registrar of the Surrogate Court of the County of \_\_\_\_\_ whenever required by



law so to do; And the same personal estate and effects, rights and credits, and all other the personal estate and effects, rights and credits of the said deceased at the time of his death, which at any time after shall come into the hands or possession of the said (*administrator*) or into the hands or possession of any other person or persons for him, do well and truly administer according to law; and shall well and truly pay over and account for to the person or persons entitled to the same, all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the Will, etc., (*if any*), or by any statute, and which may be exercised by him; that is to say, do pay the debts which the said deceased did owe at his decease, and further, do make or cause to be made a true and just account of his said administration whenever required by law so to do, and all the rest and residue of the said estate and effects, rights and credits, do deliver and pay unto such person or persons, respectively, as shall be entitled thereto under the provisions of any Act of Parliament now in force, or that may hereinafter be in force in Ontario;

And if it shall hereafter appear that any last Will or Testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said Court, making request to have it allowed and approved accordingly, if the said (*administrator*) being thereunto required do render and deliver the said Letters of Administration (approbation of such Testament being first had and made) in the said Court, then this obligation to be void and of no effect, or else to remain in full force and virtue.

Signed, Sealed and Delivered,  
in the presence of

A. B. : L.S. :  
: : : : :  
: : : : :

C. D. : L.S. :  
: : : : :  
: : : : :

E. F. : L.S. :  
: : : : :  
: : : : :

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*Notice to Creditors.*

All persons having claims against the estate of T. B., late of the City of Toronto, in the County of York, engineer, who died on or about the tenth day of May, 1886, intestate, are requested on or

ADMINISTRATORS.

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before the 10th day of July, 1886, to send in to the undersigned by letter, a statement of the nature and amount of their claims and the securities, if any, held by them ; together with their full names and addresses.

After the said day the estate will be distributed, regard being had for such claims only as the undersigned may have then notice of.

Dated at Toronto this 10th day of June, 1886.

JOHN WATSON,

*Administrator.*

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## AFFIDAVITS AND DECLARATIONS.

An affidavit is a sworn, written statement of facts made or taken in a judicial proceeding, or under some Provincial or Dominion Act. Statutes in Ontario and other Provinces, permit Menonites, Tunkers, Moravians, Quakers, and others entertaining religious scruples against taking an oath to make affirmation. The only difference between an affidavit and an affirmation is this, that the one is sworn to be true, the other is affirmed. The penalties for making a false affidavit, or a false affirmation or declaration, are identical.

To suppress what was considered an illegal practice which generally prevailed of administering oaths and affidavits voluntarily taken and made in matters not the subject of judicial enquiry, nor required or authorized by law, a statute of the Dominion of Canada was passed in the year 1874, whereby it was enacted that no Justice of the Peace, or other person, should administer or receive, or allow to be administered or received, any oath or solemn affirmation, with regard to any matter of which such Justice or person had not jurisdiction or cognizance by any law of the Dominion, or of the Province in which such oath or affirmation is administered, or of any foreign country wherein such instrument is designed to be used, save in the form given in the Act. This statute should be carefully observed by Justices and others called upon to administer oaths, as its infraction is made a misdemeanour, punishable by fine and imprisonment.

All affidavits, affirmations and declarations, should be written in words at length, and in narrative form, and expressed in the first person. Figures should not be employed in the body of the instrument, although they may be used in the jurat. If any interlineations or erasures are made, the initials of the person before whom the affidavit, etc., is sworn, should be written in the margin opposite such interlineation or erasure. Where it may be necessary to erase any words in the body of the instrument, such should be erased by drawing the pen through them, and not by scraping with a knife.

The statements contained in these instruments should be written in paragraphs, each paragraph being numbered, and dealing, as far as possible, with a distinct portion of the subject. This is the practice in all the Courts, and is useful to follow in every case.

Where drawn for use in a suit or action in any of the Courts of Law, they require, as a general rule, to be taken before a Commissioner of the Court in which they are intended to be used. Sometimes, however, they may be taken before a Justice of the Peace or Notary Public. The latter functionary is generally the proper officer where the instrument is sworn outside of the Province where it is to be used, and his seal should be affixed beside his signature.

Statutory declarations will be found useful where it is required, in matters of title to lands, to preserve evidence of certain facts, such as relate to questions of dower, possession, intestacy, etc.; and, in other transactions, allegations as to proof of accounts or other facts of which it is deemed advisable to preserve evidence.

It is a duty incumbent upon any officer administering an oath, affirmation or declaration, to satisfy himself that the party to be sworn, etc., is the person who actually signed the instrument, and that he or she has heard the same carefully read over, or has read it personally, so as to fully understand its entire contents. Where the circumstances appear to require it, the officer should not hesitate to explain the wording of the instrument carefully to the deponent and make certain that he properly understands the terms employed. An oath should not be lightly administered, but with a decorum befitting the solemnity of the act. The parties should stand, uncovered; but a Hebrew is sworn with his hat on. An oath is administered to a Christian by tendering him the volume of the New Testament to kiss. A Hebrew is similarly sworn upon the Old Testament. A party entitled to affirm may hold up his right hand. The signature of the deponent should be written by him at the foot of the affidavit, etc., but if unable to write, he should make a mark beside his name, which is written for him, thus :—

The mark of  
 $\begin{array}{c} \times \\ \text{A B.} \end{array}$  }

or,

{ his  
 A.  $\times$  B.  
 mark.

And the fact that the deponent is a marksman (or person unable to sign his name) should be noticed in the jurat.

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## FORMS.

*General Form of Affidavit.*

Province of                    I, John Simons, of the                    of  
 County of                    } in the County of                    and Province of  
 To Wit:                    } Yeoman, (or *proper designation*) make  
 oath and say:

1. That (*here state the facts to be sworn to plainly and accurately, in unambiguous language.*)

2. That, etc. (*commencing each separate paragraph upon a new line.*)

Sworn before me, at the  
                   of                    in the  
 County of                    this    day  
 of                    A.D. 18                    }

JOHN SIMONS.

A Commissioner (or J.P., for the said County, etc.)

*General Form of Affirmation.*

Province of                    I, James Brown, of                    in the  
 County of                    } County of                    , Merchant (*or other proper*  
 To Wit:                    } *designation*), do solemnly and sincerely affirm  
 and declare as follows:

1. That, etc.

2. That, etc.

3. That, etc.

Affirmed before me at  
                   in the County of  
                   this    day of  
                   A.D. 18                    }

JAMES BROWN.

J.P. (or a Commissioner, etc.)

**A Commissioner, etc.**

*Form of Oath.*

You swear that this affidavit by you subscribed is true. So help you God.

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*Affirmation.*

You do solemnly and sincerely declare and affirm, as you shall answer to Almighty God at the Great Day of Judgment, that this declaration by you subscribed is true.

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*Declaration.*

You do solemnly declare that this declaration, by you subscribed, is true.

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## AGREEMENTS OR CONTRACTS.

An agreement is a bargain entered into between two or more persons, upon sufficient consideration, to do, or not to do, a particular thing. If reduced to writing and signed under seal, it is called a *specialty*; if not under seal, whether verbal or written, it is called a *parol* agreement.

It is advisable, in contracts of importance, to add a seal. Care should be taken to express, in the writing, the full terms of the bargain in plain language.

A consideration is essential in every contract. By consideration is meant an equivalent given by the one party and accepted by the other. A simple or parol contract, unsupported by a consideration, cannot be enforced. Thus, if a man should promise to give me \$1,000 without any consideration or equivalent on my part, he is not bound to perform his promise, and I am without remedy if he should break his word. In all contracts by specialty consideration is presumed.

Considerations are of two kinds, *good* and *valuable*. A *good* consideration is that of blood or the natural love which a person has to his wife or children, or any of his near relatives. A *valuable* consideration is such as money, marriage, or the like.

A *specialty* contract is of necessity a written one; but a *simple* contract may be either written or verbal. There are, however, some simple contracts which the law requires to be in writing in compliance with the

provisions of several statutes which we will proceed briefly to notice.

The first of these is the Statute of Frauds, passed in 1676, in the reign of Charles II, (29 Car. II, cap. 3) which enacts, (section 4) that in the five following cases no verbal promise shall be sufficient to ground an action upon, but that the agreement, or at the least some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

1. Where an executor or administrator promises to answer damages out of his own estate.
2. Where a man undertakes to answer for the debt, default or miscarriage of another person.
3. Where an agreement is made upon consideration of marriage.
4. Where any contract is made of lands, tenements or hereditaments, or any interest therein.
5. And lastly, where there is any agreement that is not to be performed within a year from the making thereof.

This statute does not give to writing any validity which it did not possess before. A written promise made since this statute, without any consideration, is quite as void as it would have been before. The statute merely adds a further requisite to the validity of certain contracts, namely, that they shall, besides being good in other respects, be put into writing, otherwise they cannot be enforced. The phrase in the statute "to answer for the debt, default or miscarriage of another person," means to answer for a debt, default or miscarriage for which that other remains liable. The

words, "any agreement that is not to be performed within the space of one year from the making thereof," refer to contracts, the complete performance of which is of necessity extended beyond the space of a year. In order to bring an agreement within this clause of the statute so as to render writing necessary, both parts of the agreement must be such as are not to be performed within a year. If one *may* be performed it is good without writing. The clause requiring the "agreement or some memorandum or note thereof to be signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized," has been liberally construed, and any insertion by the party of his name in any part of the agreement, either at the beginning or in the body of the document, for the purpose of authenticating it, will be equally valid with a signature at the foot; and it is not necessary that both parties should sign the agreement, for the statute only requires that it should be signed "by the party to be charged therewith." The whole of the agreement must be contained in the writing, either expressly or by reference to some other document. And as a "memorandum or note" of the agreement is allowed, a writing sufficient to satisfy the statute may often be made out from letters written by the party, or from a written offer accepted without any variation before the party offering has exercised his right of retracting; and when correspondence is carried on by means of the post, an offer is held to be accepted from the moment that a letter accepting the offer is put into the post, although it may never reach its destination.

With reference to contracts for the sale of goods, it is to be observed that the necessary requisites depend

partly upon the value of the goods. As to goods under the value of \$40, there can be no sale without a tender or part payment of the money, or a tender or part delivery of the goods, unless the contract is to be completed at a future time. Thus, if A. should agree to pay so much for the goods, and B., the owner, should agree to take it, and the parties should then separate without anything further passing, this is no sale. But if A. should tender the money, or pay but a cent of it to B., or B. should tender the goods, or should deliver any, even the smallest, portion of them to A., or if the payment or delivery, or both, should be postponed by agreement till a future day, the sale will be valid, and the property in the goods will pass from the seller to the purchaser. If, however, any act should remain to be done on the part of the seller previously to the delivery of the goods, the property will not pass to the purchaser until such act shall have been done. Thus, if goods, the weight of which is unknown, are sold by weight; or, if a given weight or measure is sold out of a larger quantity, the property will not pass to the purchaser until the price shall have been ascertained by weighing the goods in the one case, or the goods sold shall have been separated by weight or measure, in the other. So, if an article be ordered to be manufactured, the property in it will not vest in the person who gave the order until it shall, with his consent, have been set apart for his benefit.

With regard to goods of the value of \$40 or upwards, additional requisites have been enacted by the seventeenth section of the Statute of Frauds, which provides "that no contract for the sale of any goods, wares and merchandise for the price of £10 sterling or upwards,

shall be allowed to be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

And, in Ontario, by a more recent Act (R. S. O. cap. 117, sec. 11), this enactment "shall extend to all contracts for the sale of goods of the value of \$40 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

The same law is in force in New Brunswick and Manitoba.

In Prince Edward Island, the Statute of Frauds is extended in the words of the last section to goods of the value of thirty dollars.

If an agreement for sale of goods is not to be performed within the space of one year from the making thereof, then, however small be the value of the goods, no action can be brought upon it, unless the agreement, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

It is convenient, though not necessary, that agreements should be signed by *all* the parties thereto; and where something is to be done on both sides, it is very useful to have them written in duplicate so that each

party may possess one copy. They do not require a seal in all cases. The forms given will in general indicate when a seal is necessary, and when not.

The writing may be in lead-pencil, or ink, and so may the signatures, though it is of course best to write in ink. If a party cannot sign his name in writing, he may make his mark, in place of the signature, in the presence of a witness who will attest it.

Fraud destroys all agreements. If one party is induced to enter into the contract by misrepresentations of important facts made to him by the other, the party so misled may, on discovery of the fraud, disaffirm the bargain, and cannot be held to it. After the writing is signed, it must not be altered by one party without the other's express consent.

Minors, or persons under twenty-one years, insane persons, idiots, and those grossly intoxicated cannot make a binding contract.

Agreements to do unlawful acts are void at law, and cannot be enforced.

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## FORMS.

### *Agreement for the Sale of Freeholds.*

Articles of agreement made and entered into this                      day of  
 18                      , Between A. B. of &c. (*vendor*), of the one part, and  
 C.D., of, &c., (*purchaser*) of the other part. The said A. B. and  
 C. D. do hereby respectively for themselves, their respective  
 heirs, executors and administrators agree with each other,  
 That the said A.B. shall sell to the said C. D., and that the  
 said C. D. shall purchase, All That, &c., (*here describe the*  
*premises*) with their appurtenances, and the freehold and inherit-  
 ance thereof in fee simple in possession free from all incumbrances,

at or for the price or sum of \$                      being the residue of the said purchase money on the                      day of                      next, at which time the purchase is to be completed, and the said C. D. shall, on and from that day, have actual possession of the said premises, all outgoings up to that time being discharged by the said A. B. That the production and inspection of any deeds or other documents not in the possession of the said A. B., and the procuring and making of all certificates, attested, office or other copies of or extracts from any deeds, wills or other documents, and of all declarations or other evidences whatsoever, not in his possession, which may be required, shall be at the expense of the said C. D. That on payment of the said sums of \$                      and \$                      at the respective times specified for the payment thereof as aforesaid, the said A. B., and all other necessary parties (if any) shall execute a proper conveyance of the said premises with their appurtenances, and the freehold and inheritance thereof in fee simple in possession, free from all incumbrances unto the said C. D., his heirs and assigns, or as he or they shall direct. That if from any cause whatever the said purchase shall not be completed on the said                      day of                      next, the said C. D. shall pay interest at the rate of                      per cent. on the said residue of the purchase money from that day till the completion of the purchase. In witness whereof the parties hereto have hereunto set their hands.

Signed by the said A. B. and C. D.,  
in the presence of

E. F.

A. B.

C. D.

*Agreement for Lease with a Right to Purchase at a definite sum.*

Articles of Agreement made and entered into this                      day of                      , 18                      , Between A. B. of, etc. (*lessor*), of the one part, and C. D., of, etc. (*lessee*), of the other part as follows, namely: The said A. B. hereby agrees to let, and the said C. D. hereby agrees to take, All, etc. (*here describe the premises*), for the term of                      years to be computed from the                      day of                      next, at the yearly rent of \$                      payable quarterly, on the                      day of                      , the                      day of                      , the                      day of                      , and

the                    day of                    , in every year, the first of such payments to be made on the                    day of                    next. The said A.B., his heirs or assigns will, at the request of the said C.D. his executors, administrators, or assigns, execute a lease of the said premises to the said C.D., his executors, administrators or assigns, for the term and at the rent aforesaid, to be payable as aforesaid. In the said lease to be granted as aforesaid, shall be contained covenants on the part of the said C. D., his executors, administrators and assigns, to pay the said yearly rent as the same shall become due, and also all present and future taxes, rates, assessments, and other outgoings whatsoever in respect of the said premises. And also to repair and keep in repair at his and their own expense, during the whole of the said term, the said premises so agreed to be demised. And also at the like expense to insure the said premises against loss or damage by fire in the name or names of the said A.B., his heirs or assigns, in some public office to be approved of by the said A.B., in the sum of \$                    at least, and to keep the same so insured during the continuance of the said term, and at all times when required, to produce the policy or policies of insurance and the receipt for the premiums in respect of the same to the said A. B., his heirs or assigns. And also, not to assign, sub-let, or part with the possession of the said premises, or any of them, during the said term of                    years, without the consent of the said A. B. And in the said lease to be so granted as aforesaid, shall be contained a condition authorizing the re-entry of the said A. B., his heirs or assigns, into the said premises on non-payment of the said yearly rent, or any part thereof, for the space of twenty-one days, or in case the said C. D., his executors or administrators shall become bankrupt or insolvent, or shall permit the said lease to be taken in execution, or on breach of all or any of the covenants so to be contained on the part of the said C. D., his executors, administrators and assigns in the said lease agreed to be granted as aforesaid. And in the said lease shall also be contained a covenant on the part of the said A. B., that in case the said C. D., his executors or administrators shall, on or before the determination of the said term of                    years, be desirous of purchasing the interest of the said A. B., or his heirs in the said premises so agreed to be demised, then he, the said A.B., his heirs or assigns, shall and will take for the purchase thereof the sum of \$                    , and shall and



will, upon payment of the same sum, at the costs and charges of the person or persons requiring the same, convey and assure the freehold and inheritance in fee simple in possession or expectant on the determination of the said term of                    years (as the case may be), in the same premises unto the person or persons so paying the said sum of \$                    and his, her or their heirs and assigns, or as he, she or they shall direct. And it is moreover agreed that a counterpart of the said lease shall be executed by the said C. D., his executors or administrators, at his or their own expense, and delivered to the said A. B., his heirs or assigns; and that until such lease or counterpart shall be executed, the rents, covenants and conditions agreed to be thereby respectively reserved and contained, shall, as nearly as circumstances will permit, be paid, observed and performed as if the same had been actually executed.

In witness whereof, the parties hereto have hereunto set their hands.

Signed in the presence of  
E. F.

A. B.  
C. D.

*Agreement for Sale by way of Lease, reserving Purchase Money as Rent.*

This agreement, made the                    day of                   , one thousand eight hundred and                   , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the second part hath contracted with the said party of the first part for the purchase, in fee simple, of all and singular the lands, tenements, hereditaments, and premises hereinafter mentioned to be hereby demised, for the sum of \$                    lawful money of Canada, to be paid on the days and times and in manner hereinafter mentioned. And whereas, the said parties are willing and desirous that the said party of the second part shall go into immediate possession and occupation of the said lands, tenements, hereditaments and premises, and receive a conveyance of the fee simple and inheritance thereof, so soon as the principal sum shall be fully and faithfully paid on the days and times and in

manner after mentioned (all and singular other the covenants and agreements hereinafter contained, and which on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, fulfilled, performed and kept, having been well and truly paid, performed, fulfilled and kept, according to the true intent and meaning of these presents), and that in the meantime the interest on the said principal sum should be reserved and paid as rent issuing out of the said lands, tenements, hereditaments, and premises hereby demised. Now, therefore, this agreement witnesseth, that in consideration of the premises and of the rents, covenants, and agreements hereinafter reserved and contained, and which on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, done and performed, He, the said party of the first part, Hath demised, leased, set, and to farm let, and by these presents Doth demise, lease, set, and to farm let, unto the said party of the second part, his executors, administrators and assigns, All those lands, tenements, hereditaments, and premises, situate, lying and being in the  
in the County of                      in the Province aforesaid [*here describe the premises*], together with all outhouses, waters, and water-courses thereon erected, lying or being, and all and singular other the rights, members and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the said lands, tenements, hereditaments, and premises hereby demised, or intended so to be, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators and assigns, from the                      day of                      , one thousand eight hundred and                      , for and during, and unto the full end and term of                      years from thence next ensuing, and fully to be completed and ended. Subject nevertheless to the reservations, limitations, provisions, and conditions expressed in the original grant thereof from the Crown. Yielding and paying therefor, yearly and every year during the said term hereby demised, unto the said party of the first part, his heirs, executors, administrators and assigns, the yearly rent or sum of \$                      of lawful money of Canada, in even and equal half yearly payments on the                      day of                      and                      day of                      in each and every year during the said term, without any deduction, defalcation, or abatement thereof, or out of any part thereof, for or in respect of any taxes, rates, levies, charges, rents,

assessments, statute labour, or other imposition of what nature or kind soever, either already taxed, rated, levied, charged, assessed or imposed, or hereafter to be taxed, rated, levied, charged, assessed or imposed, whether the same be now due, or shall hereafter become due, on the said demised premises or any part thereof, or on the said rent or any part thereof, or on either of the said parties to these presents, their or either of their heirs, executors, administrators, or assigns, or any of them in respect thereof, or any part thereof, by authority of Parliament or otherwise howsoever, the first payment of the said rent hereby reserved to be made on the day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_. Provided always, nevertheless, that on payment of any instalment or instalments of the principal sum hereinafter specified according to the covenant hereinafter contained, for payment thereof, and the true intent and meaning of these presents, the said rent hereby reserved shall from thenceforth be proportionably reduced, so as at no time to exceed the annual interest on such part of the said principal sum as shall from time to time remain due and owing after the payment of such instalment or instalments respectively; And provided, also, that if the said yearly rent or any part thereof, or the said principal sum or any part thereof, shall at any time or times hereafter be behind and unpaid by the space of thirty days next after any or either of the days on which the same or any part thereof ought to be paid, as herein or hereby provided, according to the true intent and meaning of these presents; Or, if the said party of the second part, his executors, administrators, or assigns, or any of them, shall at any time assign, or set over, or demise, or underlease the said demised premises, or any part thereof, or in any other manner, part with the possession of the same, to any person or persons whomsoever, for all or any part of the said demised term, without the special license or consent of the said party of the first part, his heirs or assigns, first had in writing; Or if the party of the second part, or any one acting under or claiming from him, shall at any time during the continuance of these presents commit or suffer to be committed any waste or destruction to any of the timber upon the said land, for any other purpose whatsoever than bringing the land into cultivation; Then, and in any and every of the said cases, it shall and may be lawful for the said party of the first part, his heirs or assigns, into the said

demised premises or any part thereof, in the name of the whole, to re-enter, and out of the same to eject, expel, amove and put the said party of the second part, his executors, administrators and assigns, and the same to have again, re-possess and enjoy, as in his and their first and former estate; and from the time of any such re-entry by the said party of the first part, his heirs or assigns, the said term hereby demised, or so much thereof as shall be then unexpired, and these presents, and every clause, matter and thing therein contained, shall cease and determine, and forever thereafter be null and void to all intents and purposes whatsoever, anything herein contained to the contrary thereof in any wise notwithstanding. And the said party of the second part doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his heirs and assigns, in manner following, that is to say; That he the said party of the second part, his heirs, executors, administrators, and assigns, or some of them, shall and will well and truly pay or cause to be paid unto the said party of the first part, his heirs, executors, administrators, and assigns, the said yearly rent on the days and times and in manner hereinbefore mentioned, for payment thereof, according to the true intent and meaning of these presents. And also that he the said party of the second part, his heirs, executors, administrators, or assigns, or some of them, shall and will, during the said term hereby demised, pay, do, and perform all taxes, rates, levies, charges, rents, assessments, statute labour, or other imposition above mentioned, lawfully charged or to be charged, whether the same be now due, or shall hereafter become due, on the said demised premises, on the said rent, or on any part thereof, or on any person or persons in respect thereof, or any part thereof, as aforesaid; And also that he the said party of the second part, his executors, administrators, or assigns, or any of them, shall not nor will at any time or times during the said term hereby demised, assign or set over, underlet or underlease, the said demised premises, or any part thereof, or in any other manner part with the possession of the same or any part thereof during any part of the said demised term, without such special license and consent as is hereinbefore specified, as aforesaid; And also that he the said party of the second part, or any one acting under or claiming from him, shall not at any time, during the continuance of these presents, commit, or suffer

to be committed, any waste or destruction to any of the timber upon the same land, for any other purpose than bringing the land into cultivation : And also that he the said party of the second part, his heirs, executors, administrators or assigns, or some of them, shall and will well and truly pay or cause to be paid, unto the said party of the first part, his heirs, executors, administrators or assigns, the full and just sum of \$                      of lawful money of Canada, on the days and times and in manner following, that is to say [*here set forth the terms and manner in which the purchase money is to be paid*]. And the said party of the first part, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said party of the second part, his executors, administrators, and assigns, in manner following, that is to say, That upon the due and faithful payment, performance, and fulfilment by the said party of the second part, his executors, administrators, or assigns, of all and singular the covenants and agreements herein contained, and which on the part and behalf of the said party of the second part, his executors, administrators, and assigns, are to be paid, done, and performed, he the said party of the first part, his heirs, or assigns, shall and will, at the expiration or other sooner determination of the said term hereby demised, upon the request of the said party of the second part, his executors, administrators, or assigns, made to him the said party of the first part, his heirs, executors, administrators, or assigns, or any of them, but at the proper costs and charges in the law of the said party of the second part, his executors, administrators or assigns, well and sufficiently convey and assure, or cause to be well and sufficiently conveyed and assured, unto the said party of the second part, and his heirs, in fee simple absolute, or to such person or persons and his, her, or their heirs, in fee simple absolute, as the said party of the second part, his executors, administrators, or assigns, shall nominate and appoint, and to such uses as he or they shall direct, all and singular the said lands, tenements, hereditaments, and premises hereby demised by such conveyances and assurances in the law, as by the said party of the second part, his executors, administrators or assigns or his or their counsel learned in the law, shall or may be reasonably devised, advised, or required, freed, and discharged of and from all incumbrances whatsoever : but subject nevertheless to the reservations, limitations, provisoes, and condi-

tions expressed in the original grant thereof from the Crown: with usual and proper covenants. And it is hereby further expressly agreed upon by and between the said parties, that in case at any time any of the rent or interest aforesaid, or of the purchase money shall remain unpaid by the space of                      months after the same shall have fallen due, the party of the first part, his heirs or assigns, shall have full power to re-sell the said land at the best price which can be reasonably got for the same, and thereby utterly extinguish and bar all claim, interest, and title of the party of the second part, and all claiming under or by him in the same land—such re-sale to be either for cash or upon credit as the party of the first part, his heirs or assigns, may determine. And that the party of the first part, his heirs or assigns, may in the first place pay himself the expenses of such re-sale, and the whole of the claim due, or to become due, by the party of the second part, or any one claiming by or under him, out of the proceeds of such re-sale, and pay the balance (if any there be) when collected; over to the party of the second part, or the person entitled thereto; And that the party of the second part, or those claiming by or under him, shall be answerable to the party of the first part, his heirs or assigns, for any deficiency which may happen to be produced by the re-sale between the sum then due and to become due, under these presents, to the party of the first part, his heirs, or assigns, and the proceeds of such re-sale.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered

in the presence of

E. F.

A. B. [L.S.]

C. D. [L.S.]

[NOTE.—The above instrument being a contract or agreement by specialty requires to be sealed as well as signed.]

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*Agreement to build a House, etc., the Materials to be provided by the Builder.*

Articles of agreement made and entered into the                      day of                      , 18                      , Between A. B. (*builder*), of, etc., of the one part, and C. D., (*proprietor*), of, etc., of the other part.

The said A. B., [builder], doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said C. D. [proprietor], his executors, administrators, and assigns, that he the said A. B. [builder], his executors or administrators, shall and will for the consideration hereinafter mentioned, within the space or time of (*six calendar month:*) from the date of these presents, erect, build and completely cover in and finish upon the premises, of the said C. D. [proprietor], at aforesaid, a dwelling house and buildings according to the plan and elevation set forth in the schedule hereunder written. And also do, perform, and execute, or cause and procure to be done, performed and executed, all and singular other the works mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good workmanlike and substantial manner to the satisfaction of E. F. (*surveyor or architect*), of, etc., (*insert name and residence of architect or surveyor*) or any other surveyor or architect whom the said A. B. [builder], and C. D. [proprietor] shall for that purpose by some writing under their hands appoint: such satisfaction to be testified by a writing or certificate under the hand of the said E. F. [*surveyor or architect*], or such other surveyor or architect as aforesaid. And also shall and will find and provide such good, proper and sufficient materials of all kinds whatsoever as, together with and in addition to the materials now lying on the said premises, shall be proper and sufficient for erecting the said dwelling house and buildings, and completely finishing the said works. And it is further agreed by and between the said parties that if the said A. B. [builder], his executors or administrators shall in any manner neglect or be guilty of any delay whatsoever, in building and completely finishing the said dwelling house, buildings and works as aforesaid, and the said E. F. [*surveyor or architect*] or such other surveyor or architect as aforesaid shall certify the same by writing under his hand, and the said C. D. [proprietor], shall give or leave notice in writing of such neglect or delay at the place of abode of him the said A. B. [builder], his executors or administrators, and the said A. B. [builder], his executors or administrators, shall not according to the direction of the said E. F. [*surveyor or architect*] or such other surveyor or architect as aforesaid, proceed to complete the said buildings and works within the space

of (*seven*) days after such notice given or left as aforesaid: then and in any such case it shall be lawful for the said C. D. [*proprietor*], his executors or administrators to purchase proper and sufficient materials, and also to employ a sufficient number of workmen to finish and complete the said dwelling house, buildings and works, and also that the said C. D. [*proprietor*], his executors, administrators or assigns, shall and may deduct and retain to himself and themselves the costs of such materials, and all such sums of money as he or they shall pay to such workmen for the completion of such dwelling house, building and works out of the money which shall be due to the said A. B. [*builder*], his executors, or administrators under this agreement; and also that the said A. B. [*builder*], his executors or administrators, shall not nor will in any manner do, or cause or procure to be done, any act, matter or thing whatsoever to prevent, hinder or molest the said C. D. [*proprietor*], his executors, administrators or assigns, or any person or persons employed by him or them, from completing and finishing the said dwelling house, buildings and works in manner aforesaid, or in using the materials which shall be on the said premises, and provided by either of the said parties for the doing thereof.

And the said C. D. [*proprietor*], doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said A. B. [*builder*], his executors and administrators, that he the said C. D. [*proprietor*], his executors or administrators, shall and will well and truly pay or cause to be paid unto the said A. B. [*builder*], his executors, administrators or assigns, the sum of \$ of lawful money of Canada, in manner following, that is to say, the sum of per cent. on the amount of the materials used in the said buildings and works as they shall proceed, to be ascertained by the surveyor (*or* architect) for the time being, and his certificate under his hand to be conclusive between the said parties; and also that the said C. D. [*proprietor*], his executors or administrators, shall and will every week during the progress of the said buildings and works, pay and supply the said A. B. [*builder*] his executors or administrators, with such sums of money as shall be sufficient for paying and discharging the wages and labour of the workmen and labourers who shall from time to time be employed in or about the said buildings and works, the amount whereof shall be ascertained by the surveyor (*or* architect) for the time being by a



certificate under his hand; and the remainder of the said sum of \$ , within days (or months) next after the said dwelling house, buildings and premises shall be completely built, done and finished to the satisfaction of the said E. F. [surveyor or architect], or such other surveyor or architect as aforesaid, the same to be testified in writing under his hand. And it is hereby declared and agreed by and between the said parties hereto, that in case the said C. D. [proprietor], his executors, administrators or assigns, shall direct any more work to be done in or about the said dwelling house, buildings and works than is contained in the schedule hereunder written, then, and in such case the said C. D. [proprietor], his executors or administrators, shall pay or cause to be paid unto the said A. B. [builder], his executors or administrators, so much money as such extra work and the materials used therein shall cost or amount unto, anything hereinbefore contained to the contrary notwithstanding; and that if it shall be thought proper by the said C. D. [proprietor], his executors, administrators or assigns, to diminish or omit any part of the work specified in the said schedule hereunder written, then and in such case the said A. B. [builder], his executors or administrators shall deduct and allow out of the said sum of \$ so much money as the work so to be diminished or omitted shall amount unto, upon a reasonable valuation, anything hereinbefore contained to the contrary notwithstanding; and all allowances or deductions for such extra or omitted works respectively shall be ascertained and settled by the said E. F. [surveyor or architect], or such other surveyor or architect to be appointed as aforesaid. And it is hereby covenanted and agreed by and between the said parties hereto that if any dispute or difference shall happen or arise between them, their or either of their executors, administrators or assigns, or between either of them, and the said E. F. [surveyor or architect], or such other surveyor or architect to be appointed as aforesaid, touching or concerning the said dwelling house, buildings and works hereby contracted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever relating thereto, or to the additional or extra work as aforesaid, then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the said A. B. [builder], his executors or administrators, and another by the said C. D. [proprietor], his executors, administrators or

assigns, and the third by the said two persons so named by each of them the said parties or his executors, administrators or assigns. And each of them the said parties hereto doth hereby for himself, his heirs, executors and administrators, covenant and agree with the other of them, his executors and administrators that they the said parties respectively and their respective executors and administrators shall and will severally stand to, abide by, perform and keep the award and determination of the said three persons so to be chosen, or of any two of them, touching the said several matters of dispute or difference as aforesaid, so as the same award and determination be made in writing under the hands and seals of the said arbitrators or some of them, within two calendar months next after such dispute or difference shall arise. And it is further agreed by and between the said parties, that the submission hereby made, shall, at the option and expense of either of the said parties requiring the same, be made a rule of (*name the Superior or Supreme Court of the Province*) ; and that the costs and charges attending any reference or arbitration as aforesaid shall be in the discretion of the said arbitrators, or any two of them, and shall be paid and satisfied pursuant to their award.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered

in the presence of

Y. Z.

A. B. [L. s.]

C. D. [L. s.]

### Another Form.

An agreement made the                      day of                      , 18                      , Between A.B., of, etc. (*builder*), of the first part, C.D., of, etc. (*surety*), of the second part, and E.F. (*proprietor*), of, etc., of the third part.

Whereas, the said E. F., is possessed of a piece of ground situate at (*describe the premises*) upon which he is desirous of erecting a dwelling-house and offices according to the elevation, plans and specifications prepared for that purpose by W. M., architect and surveyor, and under the direction and to the satisfaction of the said

W.M., or other architect or surveyor for the time being of the said E.F., his executors, administrators or assigns : which said elevation, plans and specifications, are marked with the letters A, B, C, D, E, F, and G, and are signed by the said A. B., C. D. and E. F., and the said specification is contained in the schedule hereunder written, or hereunto annexed : and the said A. B. has proposed to erect and complete the said dwelling-house and offices, and to make and execute all other works mentioned and specified in the said elevation, plans and specifications, within the time hereinafter limited for that purpose, and according to the stipulations and agreements hereinafter contained, at or for the price or sum of \$ : which proposal the said E. F. hath agreed to accept on the said A. B., together with the said C.D., as his surety, entering into the agreements hereinafter contained.

Now it is hereby witnessed, That the said A. B. and C. D. do, for themselves, their heirs, executors, and administrators, and each and every one of them doth for himself, his heirs, executors and administrators, hereby agree with and to the said E.F., his executors, administrators and assigns, in manner following: that is to say That he, the said A. B., shall, at his own cost and charges, forthwith, erect and complete, make, and execute, with all proper and necessary materials, workmanship, and labour, of the best kind in every respect, and in the most substantial and workmanlike manner, upon the said piece of ground, a dwelling-house and offices behind the same, with the appurtenances, and all other works, matters and things mentioned and specified in the said elevation, plans, and specification, under the direction and to the satisfaction of the said W. M., or other the architect or surveyor for the time being of the said E. F., his executors, administrators or assigns ; and for that purpose shall find and provide all proper and necessary materials, implements and machinery ; and shall make good all damages which may be occasioned either to the said dwelling-house, offices, and works, or any of them, or to adjoining buildings, by the execution of the same works or any of them ; and shall cleanse all drains and cess-pools in or about the premises, and cart and clear away at such times and in such manner as shall or may be directed by the said W. M., or other architect or surveyor as aforesaid, all surplus earth and waste or useless materials, implements and machinery, which may from time to time remain during

the execution of the same works, or at the completion thereof; And shall at his own costs and charges from time to time, until the said dwelling-house, offices and works shall be erected, completed, made, and executed, insure or cause to be insured, in the joint names of the said E. F., his executors, administrators or assigns, and of the said A. B., his executors or administrators, and for the sum of \$ , all and singular the erections and buildings for the time being standing on the said piece of ground, to the full value thereof, in some public insurance office to be approved of by the said E. F., and shall deliver the policy of insurance to the said E. F., his executors, administrators or assigns, and shall produce and show to the said E. F., his executors, administrators or assigns, the receipts for the premium of insurance, when requested so to do; and that in case of fire, all the moneys to be recovered by virtue of such insurance shall forthwith be applied in re-instating the premises, under the direction and to the approbation of the said W. M., or other architect or surveyor as aforesaid: and that the said A. B., shall well and sufficiently cover in or cause to be covered in, the dwelling-house and offices so to be erected as aforesaid, before the day of , and shall complete, make and execute, or cause to be completed, made and executed, all and singular the said dwelling-house, offices and other works, in manner aforesaid, and according to the true intent and meaning of these presents, before the day of : and that if the said A. B., his executors or administrators, shall not so well and sufficiently cover in the said dwelling-house and offices before the said day of , or shall not so complete, make and execute, the said dwelling-house, offices and works before the said day of , then, the said A. B., and C. D., their executors and administrators shall pay to the said E. F., his executors, administrators and assigns, the sum of \$ , for every week during which the said dwelling-house and offices shall remain uncovered in after the said day of and the like sum for every week the said dwelling-house, offices and works shall remain unfinished after the said day of ; which sums may be recovered as liquidated damages, or may be deducted from the sums payable to the said A. B., his executors and administrators, under this agreement, provided always that in case the said E. F., his executors, administrators or assigns, or his or their surveyor or architect, shall require any extra

or additional works to be done, or shall cause the works to be delayed in their commencement or their progress, the said A. B., his executors or administrators, shall be allowed to have such additional time for covering in and finishing the said buildings and works, beyond the said day above fixed, as shall have been necessarily consumed in the performance of such extra or additional works, or as shall have been lost by the delay caused by the said E. F., his executors, administrators or assigns, or his or their surveyor or architect as aforesaid : and the said payments for delay shall not become payable until after the expiration of such additional time or times.

And the said A. B. and C. D., for themselves, their executors and administrators, do hereby further agree with the said E. F., his executors, administrators and assigns, that in case the said W. M., or other architect or surveyor as aforesaid, shall be dissatisfied with the conduct of any workman employed by the said A. B., his executors or administrators, in the said works, or with any materials used or brought upon the said premises for the purpose of being used in the said works, and shall give notice thereof in writing under his hand to the said A. B., his executors or administrators, he, the said A. B., his executors or administrators, will forthwith discharge such workman from the said works and remove the said materials ; and that in case the said A. B., his executors or administrators, shall not, in the judgment of the said W. M., or other architect or surveyor, as aforesaid, employ a sufficient number of workmen in the execution of the said works, or have on the premises a sufficient quantity of materials or implements of proper quality for the said works, and the said W. M., or other architect or surveyor as aforesaid, shall, by writing under his hand, require the said A. B., his executors or administrators, to employ an additional number of workmen, or bring upon the premises an additional quantity of materials or implements of proper quality, and shall specify in such notice the number and description of additional workmen to be supplied, the said A. B., his executors or administrators, shall forthwith employ in the said works such additional number of workmen, and shall forthwith bring upon the premises such additional quantity of materials or implements for the said works ; and that in case he shall refuse or neglect for the space of seven days to comply with any such notice or request, it shall be

lawful for the said W. M., or other architect or surveyor as aforesaid, to dismiss and discharge the said A. B., his executors or administrators from the further execution of the said works, and for the said E. F., his executors, administrators or assigns, to employ some other person to complete the same; and that in such case the sum agreed to be paid to such other person to complete the said works (such sum being approved by the said W. M., or other architect or surveyor as aforesaid) shall be deducted from the said sum of \$ , and the balance after making any other deductions which the said E. F., his executors, administrators or assigns, shall be entitled to make under this agreement, shall be paid by the said E. F., his executors, administrators or assigns, to the said A. B., his executors or administrators, in full for the work done by him or them, at the expiration of two months after he or they shall have been so discharged as aforesaid: And it is hereby further agreed by and between the parties hereto, that all the materials brought upon the said piece of ground for the purpose of being used in the said buildings, except such as shall be disapproved of by the said W. M., or other architect or surveyor as aforesaid, shall, immediately they shall be brought upon the said premises, become the property of the said E. F., his executors, administrators or assigns, and shall be used in the said works.

And the said E. F. doth hereby, in consideration of the works so agreed to by the said A. B., agree with the said A. B., his executors, administrators and assigns, that he, the said E. F., his executors, administrators or assigns, will pay to the said A. B., his executors, administrators or assigns, the said sum of \$ , in manner following, that is to say: the sum of \$ within one week after the said W. M., or other architect or surveyor as aforesaid, shall have certified in writing to the said E. F., his executors, administrators or assigns, under his hand, that work to the value of \$ has been done under this agreement, and the further sum of \$ within one week after the said W. M., or other architect or surveyor shall have certified as aforesaid, that further work to the value of \$ has been done under this agreement, and so on shall pay \$ for every \$ worth of work so certified as aforesaid, until the whole of the said works shall be finished, and shall pay the balance remaining unpaid within one month after the said works shall have been completed and finished

to the satisfaction of the said W. M., or such other architect or surveyor, and the said W. M., or such other architect or surveyor, shall have certified to the said E. F., his executors, administrators or assigns, that the said works have been completed and finished to his satisfaction. Provided always, and it is hereby further agreed by the parties hereto, and particularly by the said A. B., and C. D., that if the said E. F., his executors, administrators, or assigns, shall at any time be desirous of making any alterations or additions in the erection or execution of the said dwelling-house, offices and other works, then and in such case, the said A. B., his executors or administrators, shall make and execute such alterations and additions to the satisfaction of the said W. M., or such other architect or surveyor; and the sum or sums of money to be paid or allowed between the said parties in respect of such alterations and additions shall be settled and ascertained by the said W. M., or such other architect or surveyor, whose determination shall be final. Provided always, and it is hereby further agreed, that in the settling and ascertaining the said sum or sums of money, the said W. M., or such other architect or surveyor, shall not include any charge for day work unless an account thereof shall have been delivered to the said E. F., his executors, administrators, or assigns, or the said W. M., or such other architect or surveyor, at the end of the week in which the same shall have been performed. Provided also, and it is hereby further agreed, that no such alteration or addition shall release the said A. B. and C. D., their executors or administrators, or any or either of them, from the observance and performance of the agreements herein contained on the part of the said A. B., his executors or administrators, to be observed and performed, so far as relates to the other parts of the said dwelling-house, offices and works; but that the same agreements shall in all respects be observed and performed in like manner as if no such alteration or addition had been directed. Provided also, and it is hereby agreed, that if the said W. M. shall die, or cease to act as the surveyor and architect of the said E. F., his executors, administrators or assigns, and the said A. B., his executors or administrators shall be dissatisfied with the surveyor or architect for the time being, appointed by the said E. F., his executors, administrators or assigns, in the room of the said W. M., then it shall be lawful for the said A. B., his executors or administrators, at his own expense





is hereby agreed that in consideration of the sum of \$ \_\_\_\_\_ to be paid by the said A. B., his executors or administrators, to the said G. H., his executors or administrators, as hereinafter mentioned, the said G. H., his executors or administrators, will do all the carpenter's work necessary to be done for the completion of the said contract in the manner, within the time, and according to the plans and specifications mentioned and referred to in the said contract, and will provide all materials and implements necessary for the performance of such work, and will in all things abide by, perform, fulfil and keep the terms and stipulations of the said contract, so far as the same are applicable to such carpenter's work. And it is further agreed that in case the said A. B., his executors or administrators, shall become liable under the said contract to pay any damages or penalty by reason of the default or delay of the said G. H., his executors or administrators, in the performance of the work agreed to be performed by him, then that the said G. H., his executors or administrators shall pay to the said A. B., his executors or administrators, the amount of such damages or penalty, and that in case that the said W. M., or other architect appointed to superintend the works under the said contract shall disapprove of the work done by the said G. H., his executors or administrators, or the materials used by him or them, or the manner in which such work is done, or in case the said G. H., his executors or administrators, shall refuse or neglect forthwith on request by the said W. M., or other architect as aforesaid, to re-execute such work with the materials and in the manner required by the said W. M., or other architect as aforesaid, it shall be lawful for the said A. B., his executors or administrators, to dismiss and discharge the said G. H., his executors or administrators from the further performance of such work, and employ some other person to complete the same, and to deduct the costs of such completion from the sum which would otherwise be payable to the said G. H., his executors and administrators, under this agreement. In consideration whereof the said A. B. agrees to pay to the said G. H., his executors or administrators, the sum of \$ \_\_\_\_\_ in manner following, that is to say: 75 per cent. of the contract price for the work done by the said G. H., his executors or administrators, during any week, on the Saturday in every week during the continuance of the said works, and balance within one month after the completion of the said dwelling house and offices.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L. s.]  
G. H. [L. s.]

[NOTE.—This form of sub-contract may be adapted to any particular work on a building, as bricklayer's, painter's, etc.]

*Bond from a Builder and two Sureties for the due Performance  
of a Contract.*

Know all men by these presents, That I, A. B., (*builder*), of, etc., am held and firmly bound unto E. F., of, etc., in the penal sum of \$1,000, lawful money of Canada, and that we, G. H., (*surety*), of, etc., and J. K., (*other surety*), of, etc., as the sureties for the said A. B., his executors and administrators, are severally and respectively held and firmly bound to the said E. F., in the penal sum of \$1,000 each, lawful money aforesaid, all the said several sums to be paid to the said E. F., or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made by me the said A. B., I, the said A. B., bind myself, my heirs, executors and administrators, and every of them, firmly by these presents, and for which several payments to be well and truly made by us, we the said G. H. and J. K., respectively, bind ourselves respectively, and our respective heirs, executors and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this  
day of 18 .

Whereas the above bounden A. B., (*builder*), has entered into a contract and agreement in writing with the said E. F., dated the  
day of 18 , whereby he, the said A. B., has contracted and agreed with the said E. F., to do the whole of the works in erecting and completely finishing a certain dwelling-house and premises, with the outbuildings belonging thereto, in every respect agreeably to the drawings, agreements, conditions, clauses and particulars, mentioned, specified and contained in a certain paper writing or specification annexed to the said contract;

And whereas, at the time of entering into such agreement as aforesaid, the said A. B., and his said sureties, the said G. H. and J. K., agreed to execute the above written bond or obligation for the due performance of the several works so contracted to be done as aforesaid, according to the specification aforesaid.

Now, therefore, the condition of the above written bond or obligation is such that if the above bounden A. B., his executors or administrators do and shall, within                      calendar months from the date of the above written bond or obligation, do, perform, execute and completely finish, or cause to be done, performed, executed and completely finished, all and singular the several buildings and works mentioned and specified in the hereinbefore mentioned specifications, conformably to the said specification in all respects whatsoever, and in a good and workmanlike manner: Then the above written bond or obligation shall be void, but otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L. s.]  
G. H. [L. s.]  
J. K. [L. s.]

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*Contract to do Repairs, etc.*

An agreement made the                      day of                      18                      , Between  
A. B., of, etc., and C. D., of, etc.

The said A. B. agrees to do all the works hereunder specified in the best and most workmanlike manner, and to provide for such works all necessary materials and things of the best quality, and to complete and finish the said works on or before the                      day of                      next, and in case the said works shall not be finished on or before the said                      day of                      , to pay or allow to the said C. D., out of the monies payable under this agreement, the sum of \$                      , for each day during which the said works shall remain unfinished after the said                      day of                      , and in case the said C. D. shall require any additions or alterations to be made to the works hereunder specified, to execute such additions and alterations in the best and most workmanlike manner, with material of

the best quality. And it is hereby agreed that in case any additional works shall be required by the said C. D. or in case the said C. D. shall delay the execution of the said works, the said A. B. shall have such additional time for the performance of the said works after the said                      day of                      , as shall be equivalent to the time consumed in the execution of such additional works, or to the time during which the said C. D. shall have delayed the said works, and that the payments for non-completion as aforesaid, shall not be payable until after the expiration of such additional time. And it is hereby further agreed that materials brought upon the premises of the said C. D., for the purpose of being used in the said works, shall, if of proper description and quality, immediately become the property of the said C. D. And the said C. D. agrees to pay to the said A. B., for the said works, the sum of \$                      within one week after the same shall be finished.

Witness the hands of the said parties.

Signed in the presence of  
Y. Z.

A. B.  
C. D.

*Agreement for Sale of Merchant's Stock.*

This agreement made the                      day of                      18                      , Between A. B., of, etc., merchant, of the one part, and C. D., of, etc., merchant, of the other part.

The said A. B. agrees to sell, and the said C. D. agrees to buy, all the stock of goods, wares and merchandise, now being in and upon the store occupied by the said A. B. at                      aforesaid, at the invoice price thereof (or at the sum of \$                      or otherwise as agreed upon) an account of such goods, wares and merchandise being taken by the parties hereto in the presence of each other. [And it is hereby agreed that any of the said goods, wares or merchandise, which may be damaged, shall be appraised and valued by three disinterested persons, each of the parties hereto selecting one of such persons and the two so selected appointing the third, and that the price set upon such damaged goods, wares and merchandise, by the said three persons, or any two of them, shall be substituted for the invoice price thereof, and that within ten days

after the value of the said goods, wares and merchandise shall have been ascertained as aforesaid, the said C. D. shall pay the amount thereof to the said A. B.] And the said A. B. agrees to make, execute and deliver unto the said C. D., a good and sufficient bill of sale of the said goods, wares and merchandise, and to give to the said C. D. quiet and peaceable possession thereof upon payment to him, the said A. B., by the said C. D., within the time before specified of the invoiced [*or appraised*] value as aforesaid.

Witness, etc., (*complete as in last form.*)

[If desired, the clause for appraising damaged goods can be made applicable to the entire stock. The clause between brackets will be left out if a fixed sum is agreed on.]

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*Agreement for Sale of Grain.*

Memorandum of agreement made the            day of            18    ,  
Between A. B., of, etc., of the one part, and C. D., of, etc., of the  
other part. The said A. B. agrees to sell to the said C. D. five  
thousand bushels of wheat, of the grade known as            , to be  
delivered to the said C. D., at [            ] on or before the first day  
of January next, free of all charges, at the price or sum of  
per bushel. And the said C. D. agrees to purchase the said wheat,  
and to pay therefor at the rate aforesaid, upon delivery as aforesaid.  
And the said A. B. hereby guarantees and warrants the said  
wheat to be good, clean and merchantable grain.

Witness the hands of the said parties.

Signed in the presence of

Y. Z.

A. B.

C. D.

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## APPRENTICES.

An apprentice is one bound in due form of law to a master, to be taught by him the handicraft, art, trade or business which the master professes or follows.

The law relating to this subject is a branch of the general law relating to MASTER AND SERVANT, which will be found more fully treated of in a subsequent chapter. The distinctive feature of apprenticeship is that the master agrees to teach as well as employ.

The contract of apprenticeship is usually entered into by a deed containing the specific terms of the agreement, as well as covenants for due performance of its obligations on the part of both parties. This is called an Indenture of Apprenticeship, general forms of which are appended. As it is usually entered into during the minority of the apprentice, whose services may by law belong to his parent or guardian, and who, being under age cannot, save under statutory provisions, contract, the parent or guardian is, as a rule, necessarily a party to it. It continues no longer than the minority of the apprentice.

By virtue of this contract, it is the master's duty to fully instruct the apprentice in all details of the handicraft, trade or business in question. He is supposed to stand toward the apprentice in somewhat the relation of a parent, and is expected to watch over his morals and conduct, to correct him, when necessary, with kindness and moderation, and to afford him such friendly counsel and advice as the youth and inex-

perience of the apprentice may appear to require. He must not abuse his authority, either by harsh or cruel treatment, or by keeping the apprentice employed in menial occupations wholly distinct from the trade or business which he is indentured to learn. He cannot annul the contract by dismissing the apprentice, save for sufficient cause, and then only by proper application to a Justice of the Peace, or such other authority as the statute law of the Province may provide.

The master usually covenants to take the apprentice into his service and teach him the art or trade he himself exercises or carries on; to find him in meat, drink and lodging, and sometimes with wearing apparel, washing and all other necessities, during the term. The sickness of the apprentice, or his incapacity to serve and to learn by reason of ill health, or an accident, does not discharge the master from his covenant to provide for him and to maintain him, inasmuch as the latter takes him for better and for worse, and must minister to his necessities in sickness as well as in health.

The apprentice, on his part, is under obligation faithfully to serve his master, obey all his lawful orders and commands, keep his secrets, preserve and protect his property, and advance his interests so far as he can, and to apply himself diligently to learn the trade or business. He must also observe all the stipulations contained in the indenture to be performed by him. He must not absent himself, without leave, from his master's service, and should not, save in such occupations as necessarily require it, such as seafaring, be taken out of the Province. Should he suffer injury to his

health or morals by improper treatment of his master, he may be discharged upon application to the proper tribunal.

An indenture executed by a minor without the consent of his parent or guardian, and in the absence of any statute giving the minor alone power to enter into it, is not binding upon him. Where the minor is a male over fourteen, or a female over twelve, his or her consent to be bound is also generally requisite.

The death of the master terminates the contract, unless otherwise provided by the indenture or by statute. The contract may provide for the assignment of the apprentice to another master continuing in or carrying on the same trade or handicraft, but, if not, such cannot be made without the consent of the apprentice.

#### STATUTE LAW IN ONTARIO.

Voluntary contracts of service or indentures entered into by any parties within Ontario are not binding for a longer period than nine years from the day of the date of the contract.

The general provisions of the Act respecting apprentices and minors, R. S. O. cap. 135, may be abstracted as follows :

The Act respecting apprentices and minors provides that where a minor over the age of sixteen, who has no parent or legal guardian, or who does not reside with such parent or guardian, enters into an engagement, written or verbal, to perform any service or work, such minor shall be liable upon the same, and shall have the benefit thereof in the same manner as if of legal age.

A parent or other person having the care or charge of a minor, or any charitable society being authorized by the Lieutenant-Governor-in-Council to exercise the powers conferred by the Act, and



having the care and charge of a minor, the minor being a male not under the age of fourteen years, may, with the consent of the minor, put and bind him as an apprentice, by indenture, to any respectable and trustworthy master-mechanic, farmer, or other person carrying on a trade or calling, until such minor attains twenty-one. Or, in case of a female not under the age of twelve years, she may, with her consent, be bound to such person, or to domestic service until she attains eighteen.

When the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two Justices of the Peace, may bind the child as an apprentice until the child attains twenty-one if a male, or eighteen if a female. The mother and the Justices must sign the indenture. No child fourteen years old or upwards is to be so apprenticed without his or her consent.

The Mayor, Judge of the County Court, or Police Magistrate of any city or town, and in a county, the Judge of the County Court, may apprentice orphan children and children who have been deserted by their parents, or whose parents have been committed to gaol.

A Judge of the County Court, or Police Magistrate, may alter the mode of payment of wages, and may annul the indenture of apprenticeship.

If the master of an apprentice dies, the apprentice, if a male, by operation of law, and without any new writings, becomes transferred to the person (if any) who continues the master's business.

A master may transfer his apprentice, with the consent of the latter, to any person who is competent to receive or take an apprentice, and who carries on the same kind of business.

Every master must provide to his apprentice suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the indenture, and must also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling.

Every apprentice must faithfully serve his master, obey all his lawful commands, and not absent himself from his service, day or night, without consent.

A master convicted before any Justice, Mayor or Police Magistrate, on the complaint of the apprentice, of any ill usage, cruelty or refusal of necessary provisions, is liable to a fine not exceeding twenty dollars and costs, and to imprisonment in default for a term not exceeding one month.

An apprentice convicted of refusal to obey lawful commands, or of waste or damage to property, or of any other improper conduct, may be imprisoned for a term not exceeding one month.

An apprentice absenting himself before the time of service expires, may be compelled to make good the loss by longer service or pecuniary satisfaction; and if he refuses or neglects to do so, may be committed to gaol for a term not exceeding three months; but the master must proceed to enforce such service or satisfaction within three years after the expiration of the term for which the apprentice contracted to serve.

Persons harbouring or employing an absconding apprentice, are liable to pay the full value of the apprentice's labour.

The apprenticeship indenture may be cancelled if the apprentice becomes insane, or is convicted of felony, or is sentenced to the Provincial Reformatory or Penitentiary, or absconds. The master must, within one month, give notice in writing to the other parties to the indenture of his intention to cancel the indenture, which notice must be served on the parties, or published in *The Gazette*, or in a local county or city newspaper.

Masters or apprentices may appeal to the General Sessions against any Magistrate's decision, and the General Sessions may make any order under the Act which the County Judge could make.

#### NOVA SCOTIA.

The same general principles obtain as in Ontario. By the Revised Statutes, cap. 98, all children under fourteen years may be bound as apprentices or servants until that age; above that age, male children may be indentured until twenty-one; and female until eighteen or marriage. Where a minor above fourteen years is bound apprentice by his or her parent or guardian, the consent of the minor must be obtained and signified in the written indenture, which is made out in duplicate and executed by the minor, as well as by the other parties. The minor is entitled to the full amount of

money, or other return, given for his services. The statute imposes a duty on the parties binding minors as apprentices to see that they are properly treated. Complaints are heard before two Justices, subject to appeal to the Supreme Court of the Province. Apprentices guilty of misconduct may be punished by imprisonment, upon an order of a Justice.

#### NEW BRUNSWICK.

The following is a summary of the statute law :

Children under fourteen years may be bound apprentice until that age by their father, or, in case of his death or incompetency, by their mother or other legal guardian : if they have no parent competent to act, and no guardian, they may bind themselves, with the assent of two Justices.

Minors above fourteen not having parents or guardians competent to act, may be bound in the same manner, with their consent, to be expressed in the indenture, and testified by their signing the same ; females to the age of eighteen or marriage, and males to twenty one years.

The Indenture of Apprenticeship must be in two parts—one part to be kept by the parent or guardian (if any), or to be deposited with the Town Clerk for the use of the minor.

No indenture is binding on the minor after the death of his master ; nor shall any indenture be assignable ; nor shall any minor be taken out of the Province, unless with his consent to be declared in the presence of a Justice, and certified by him in writing.

Provision shall be made in every Indenture of Apprenticeship for teaching the indentured child or children to read and write, and to cypher as far as the rule of three, and for religious and other instruction ; and such other benefit or allowance to the minor as may be agreed upon ; and, in case of sickness, for medical attendance, board and care.

Before any indenture is executed, the parties shall go before a Justice of the Peace, who shall examine whether the apprentice has any just objection thereto, and shall certify thereon accordingly ; and no indenture shall be deemed executed without such certificate.

All considerations of money, etc., shall be paid or secured to the sole use of the apprentice.

Complaints, etc., shall be heard before one Justice.

No person shall sell upon credit to any apprentice.

Harbouring an absconded apprentice is punishable by a fine of \$20; and if by a master of a vessel, \$40.

PRINCE EDWARD ISLAND.

The more specific provisions of the law of this Province upon this subject, enacted by the Statute, 8 Vict., cap. 14, may be summarized as follows :

Any parent, or parents, guardian or guardians, may bind out as an apprentice, any child of any age as an indentured servant to any tradesman, artisan or farmer, for a period not exceeding the time when such child shall attain the age of twenty-one years.

Any infant of twelve years of age may be lawfully indentured to any tradesman, farmer, or other, by his or her own consent, if such infant have no parent or guardian within the Island, until such infant attain twenty-one years, or for a shorter period, as may be agreed. Such indenture must be entered into in the presence and with the consent of two Justices of the Peace, each of whom shall sign such indenture.

All infants of sixteen years and upwards, having no parents or guardians in the Island, may indent themselves to service to any tradesman, farmer, or other, until twenty-one years, by indenture under seal.

Every Indenture of Apprenticeship must contain a stipulation to cause the indentured child to be taught reading, writing and the common rules of arithmetic.

Any two Justices of the Peace may bind mendicant children, abandoned by their parents. If an apprentice desert his employment, one Justice may issue a warrant to arrest him, and may commit him to gaol. The harbouring of deserting apprentices is punishable. Complaints in such matters, and as to ill-treatment, wages, etc., are disposed of before three Justices of the Peace.

## MANITOBA.

The law in Manitoba may be said to be nearly identical with that in Ontario, the statute, cap. 40, R. S. M., being in large part a copy of the Ontario Statute.

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## FORMS.

*Apprenticeship Indenture.*

This Indenture, made the fourth day of June, 1885, Between William Jones, of Chatham, in the County of Kent, Jeweller, of the first part, Henry Jones, his son, now of the age of seventeen years, of the second part, and Thomas Mason, of the same place, printer, of the third part, Witnesseth, That the said William Jones, with the consent of his said son, Henry Jones, testified by his being a party to and executing these presents, doth hereby put, place, bind and indent him, the said Henry Jones, to the said Thomas Mason to learn the art and trade of a printer, and with him, the said Thomas Mason, his executors, administrators and assigns, after the manner of an apprentice to dwell and serve from the date hereof until the fourth day of June, 1889, being a period of four years, when the said minor will arrive at the age of twenty-one years.

And the said William Jones doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said Thomas Mason, his executors, administrators and assigns, that during the said term of four years, the said Henry Jones shall well and faithfully serve the said Thomas Mason, his secrets keep, and lawful commands at all times obey, and shall give and devote to him his whole time and labour; that he shall not marry during the said term, nor use ardent spirits, nor practice gaming or any other unlawful sports, nor waste, injure or destroy the property of his master, but conduct himself in a sober, temperate, honest manner, and as a good and faithful apprentice ought to do, during all the time aforesaid.

And the said Thomas Mason, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said William Jones, his executors and administrators, that he, the said Thomas Mason, his executors and administrators, shall and will teach and instruct, or cause to be taught and instructed, the said Henry Jones, in the art, trade and mystery of a Printer, and shall and will find and provide for the said apprentice sufficient meat, drink, apparel, washing and lodging during the said term; and at the expiration thereof shall and will give his said apprentice two suits of apparel (*any other special terms may be here inserted*); and the said Thomas Mason further agrees to pay to the said William Jones, father of the said Henry Jones, the following sums of money, to wit: for the first year's service, twenty-five dollars; for the second year's service, seventy-five dollars; and for each and every subsequent year, until the completion of his term, one hundred dollars; which said payments are to be made on the first day of June in each year.

And for the true performance of all and singular the covenants and agreements hereinbefore contained, the said parties bind themselves each unto the other, jointly by these presents.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered.

in the presence of

R. JOHNSON.

WILLIAM JONES. [L.s.]

HENRY JONES. [L.s.]

THOMAS MASON. [L.s.]

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*Indenture of Apprenticeship for a Girl to learn Housework, etc.*

This Indenture, made the tenth day of May, 1885, Between Mary Franks, of Niagara, in the County of Lincoln, Widow, of the first part, Sarah Franks, her daughter, now of the age of fifteen years, of the second part, and Robert Holden, of the same place, Farmer, of the third part, Witnesseth that the said Sarah Franks, by and with the consent of the said Mary Franks, her mother, testified by her execution of these presents, hath bound and put herself, and by these presents doth bind and put herself apprentice to the

said Robert Holden, with him to dwell and serve from the day of the date hereof until the full end of the term of two years next ensuing, fully to be completed and ended; during which term the said Sarah Franks her said master faithfully shall and will serve in all lawful business, according to her power and ability, and honestly and obediently in all things demean and behave herself toward her said master during the term aforesaid.

And the said Robert Holden shall and will teach and instruct, or cause to be taught and instructed, the said apprentice in sewing, knitting and housewifery, the management of the dairy, and all matters connected with the calling of a farmer proper to be taught to her the said apprentice, together with reading, writing, and the other usual branches of a common school education; and shall and will during the said term find, provide and allow her sufficient meat, drink, clothing, lodging, washing, and all other necessities; and at the expiration of the term aforesaid shall and will give unto the said apprentice two suits of apparel.

In Witness, etc. (*Conclude as in last form*).

Signed, etc.,

JOHN SERVOS.

MARY FRANKS. [L.S.]

SARAH FRANKS. [L.S.]

ROBERT HOLDEN. [L.S.]

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*Assignment of an Indenture of Apprenticeship.*

*(To be indorsed upon it).*

Know all men by these presents, that I, the within named Samuel Moore, by and with the consent of James Jackson, my within named apprentice, and Henry Jackson, his father (*or as the case may be*), parties to the within Indenture, testified by their signing and sealing these presents, for divers good causes and considerations, have assigned and set over the within Indenture, and the said James Jackson, the apprentice within named, unto John Travers, of Milton, of the County of Halton, Printer, his executors, administrators or assigns, for the residue of the within mentioned term, he and they performing all and singular the covenants therein contained on my part to be kept and performed.

And I, the said James Jackson, do hereby covenant on my part, with the consent of my father, the said Henry Jackson, faithfully to serve the said John Travers, as an apprentice for the residue of the term within mentioned, and to perform toward him all and singular the covenants within mentioned on my part to be kept and performed.

And I, the said John Travers, do for myself, my executors and administrators, covenant to perform all and singular the covenants within mentioned on the part of the said Samuel Moore to be kept and performed.

Signed, sealed and delivered, etc.

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## ARBITRATIONS AND AWARDS.

An arbitration is the reference and submission of a matter in dispute to the decision of one or more persons called arbitrators. The findings or decisions of arbitrators in such matters are called awards.

Instead of having a dispute settled by an action in a law Court, people sometimes prefer to leave the matter to fair-minded persons mutually agreed upon, not judges of the Courts, nor, necessarily, lawyers, but men of business ability and possessed of special knowledge of the trade, or other matters which may be involved. Business men, as a rule, prefer arbitrations to lawsuits in trade, or business disputes, as involving more certainty of justice, with less delay and expense. Boards of Trade usually provide that their members shall, in the first instance, submit their differences to this mode of settlement; and in articles of co-partnership between traders, it is usual to stipulate that if any dispute shall arise it shall be referred to the determination of two indifferent persons as arbitrators, or of their umpire, who is commonly required to be chosen by the arbitrators.

It is also a common practice of all Courts where the English law is administered, to order the submission of intricate matters of account to arbitrators appointed by such Courts. So, also, many statutes require particular matters in dispute between parties to be settled in this manner.

Arbitrations are thus either voluntary or compulsory; the former being made by mutual agreement, the latter where either party, under the statute law of a particular Province, has a right to compel a reference of matters in controversy, without the consent of the other.

In trifling matters of dispute the agreement to refer the dispute (called a submission) is verbal; but it is preferable in all cases to have a writing signed by both parties. The writing, or submission, usually provides that the award in writing of the arbitrators, or of their umpire in case of disagreement, shall be binding and conclusive on all parties. It is generally also further provided that in case either party should neglect or refuse for a given time to appoint an arbitrator, the arbitrator chosen by the other party may make an award which shall be binding on both.

Notwithstanding an agreement to refer disputes to arbitration, either party may bring the matter into Court, unless the agreement should contain an express covenant not to sue, and the matter is in the hands of the arbitrators. But the Court will not compel a party to name an arbitrator, should he refuse to do so in violation of his agreement.

Where the submission provides that the award may be made a rule or order of a Court, or where the reference is had under an order of the Court, the arbitrators and the parties to the reference become subject to the jurisdiction of the Court, which has power to set aside any award which may appear to have been given unjustly or through mistake of law; or to enforce the performance of an award where it is manifestly valid.

If the submission relate to criminal matters, either party may at any time revoke his submission and thus terminate the authority of the arbitrators. And generally, all submissions, where not under order of Court, or a particular statute, may be revoked by either party at any time before the award is reduced to writing.

Under statutes of most of the Provinces, the attendance of witnesses before an arbitrator can be compelled by process issuing out of the Court. The arbitrator may administer the oath, and false swearing is punished as perjury. An express order or agreement that the witnesses shall be examined upon oath is not generally necessary.

The authority of arbitrators is liable to be determined not only by a revocation of the submission, but also by the death of either of the parties previously to the making of the award. In order to obviate this inconvenience, it is now usual to insert in the order or rule of Court by which reference is made to arbitration, a provision that the death of either of the parties shall not operate as a revocation of the authority of the arbitrators, but that the award shall be delivered to the executors or administrators of the parties, or either of them, in case of their or his decease. And the same stipulation may be effectually made in a submission to arbitration by private agreement.

When no time is limited for the making of the award, it must be made within a reasonable time; but if a given time be limited, the award must be made within that time, unless the time for making it be enlarged. The submission to arbitration frequently contains a power for the arbitrators or umpire to enlarge the time for making the award; and in this case the time may be

enlarged from time to time by such arbitrators or umpire, provided the enlargement be made on or before the expiration of the time originally limited for making the award. And if the submission be made a rule of Court, then, whether the arbitrators or umpire have power to enlarge the time or not, the Court or a judge there has usually power to enlarge the time under statute. And should no enlargement be formally made, yet the parties may, by continuing their attendance on the reference, or by recognizing the proceedings under it, virtually empower the arbitrators or umpire to make a valid award subsequently to the time originally limited.

In proceeding in the business of the arbitration, the arbitrators are bound to require the attendance of the parties, for which purpose notice of the meetings of the arbitrators should be given to them. But if either party neglect to attend either in person or by attorney after due notice, the arbitrators may proceed without him, In taking the evidence the arbitrators are at liberty to proceed in any way they please, if the parties have due notice of their proceedings and do not object before the award is made ; but in order to obviate any objection, they ought to proceed in the admission of evidence according to the regular rules of law. The award should be signed by the arbitrators in each other's presence, and when made it must be both certain and final. Thus, if the award be that one party enter into a bond with the other for his quiet enjoyment of certain lands, this award is void for uncertainty ; for it does not appear in what sum the bond should be. If the arbitrators be *empowered* to decide all matters in difference between the parties, the award will not necessarily be wanting in finality for not deciding on all such matters, unless it

appear to have been *required* that all such matters should be determined by the award, and all such were *submitted*. An award, to be binding, must embrace every matter submitted. If the award reserve to the arbitrators, or give to any other person, or to one of the parties, any further authority or discretion in the matter, it will be bad for want of finality. And if the award be that any person, not a party to the reference, should do an act, or that money should be paid to, or any other act done in favour of, such a person, unless for the benefit of the parties, such award will be void. An award, however, may be partly good and partly bad, provided the bad part is independent of and can be separated from that which is good. But if by reason of the invalidity of part of the award, one of the parties cannot have the advantage intended for him as a recompense for that which he is to do, according to that part of the award which would otherwise be valid, the whole will be void. If it should appear on the face of the award that the arbitrators, intending to decide a point of law, have fallen into an obvious mistake of the law, the award will be invalid. But where subjects involving questions both of law and fact are referred to arbitration, the arbitrators may make an award according to what they believe to be the justice of the case, irrespective of the law on any particular point.

The Courts have power to set aside the award for corruption or other misconduct on the part of the arbitrators, or if they should be mistaken in a plain point of law or fact. The application to set aside the award must, however, be made within the time limited by statute. But although the time limited by statute may have expired, yet, if there be any defect apparent on

the face of the award, the Court, as a rule, will not assist in carrying it into effect by granting process to enforce it. If the submission to arbitration be made by rule or order of the Court in any cause, the Court still retains its ancient jurisdiction of setting aside the award on account of either misconduct of the arbitrators, or of their mistake in point of law. Sometimes the Court will refer the matter back to the arbitrators for further examination, in the event of any application being made to the Court on the subject of the award.

If an umpire be appointed, his authority to make an award commences from the time of the disagreement of the arbitrators, unless some other period be expressly fixed; and if, after the disagreement of the arbitrators, he makes an award before the expiration of the time given to the arbitrators to make their award, such award will be valid. The umpire must be chosen by the arbitrators in the exercise of their judgment, and must not be determined by lot, unless all the parties to the reference consent to his appointment by such means. In order to enable him to form a proper decision, he ought to hear the whole evidence over again, unless the parties should be satisfied with his deciding on the statement of the arbitrators. And the whole matter in difference must be submitted to his decision, and not some particular points only on which the arbitrators may disagree.

An award for the payment of money creates a debt from one party to the other, for which an action may be brought in any Court of law. But when the award is made a rule of Court, its performance may be enforced by execution. And where the reference is made by order of a Court of Equity, or where the award requires any act to be done which cannot be enforced by an

action at law, equity will decree a specific performance.

It often happens that the matters to be referred are of too complicated a nature to admit of successful carriage without the intervention of a professional man. The foregoing observations are not intended to apply to such matters: they are meant for plain and simple cases only.

In Ontario, the fees payable to witnesses are fixed by statute at the same amount as would be paid such witnesses in any ordinary suit in the Court having jurisdiction over the matter of the reference. Parties are required to pay the costs of adjournments of the proceedings made at their request or by reason of their absence. Beyond a reasonable fee to the arbitrators for drawing up their award, their fees are as follows:

Where arbitrators are not either barristers, attorneys, engineers, architects, or Provincial Land Surveyors--

For every meeting where the cause is not proceeded with but an enlargement or postponement is made at the request of either party, not less than.....	\$ 2 00
Nor more than.....	4 00
For every day's sitting, to consist of not less than six hours, not less than.....	5 00
Nor more than.....	10 00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than.....	1 00
Nor more than.....	1 50

Where the arbitrator is such professional person--

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the

request of either party, not less than.....	\$ 4 00
Nor more than.....	8 00
For every day's sitting, to consist of not less than six hours, not less than.....	10 00
Nor more than.....	20 00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than.....	2 00
Nor more than.....	3 00

For remedies by arbitration in the adjustment of disputes between masters and workmen, reference should be had to the "Trades Arbitration Act," cap. 134, R. S. O.

# FORMS.

## General Form of Submission to Arbitration.

This Indenture, made the            day of            18   , Between A. B., of, etc., of the one part, and C. D., of, etc., of the other part, Whereas, certain differences have arisen between the said A. B. and the said C. D., respecting, etc., [*here state concisely the subject-matter in dispute, or, if all matters in difference are referred, you had better not state such subject-matter at all*] : and it is agreed by and between the said A. B. and C. D. to refer the said differences [or *all matters in difference between them*] to the award, order, final end and determination of U. V., of, etc., and X. Z., of, etc., arbitrators nominated by the said A. B. and C. D., respectively; and in case they disagree about making an award, or fail to make an award before the            day of            next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint.



Now this indenture witnesseth that they, the said A. B. and C. D., do, and each of them for himself, severally and respectively, and for his several and respective heirs, executors and administrators, doth covenant, promise and agree with and to each other, his executors and administrators respectively, that the said differences [or all matters in difference] between the said A. B. and C. D., be forthwith referred to the award, order, arbitrament, final end and determination of the said U. V. and X. Z. ; and in case they disagree about making an award, or fail to make an award before the day of            next, then to the award, umpirage, final end and determination of such umpire as the said arbitrators shall, by writing under their hands, endorsed on these presents, before they enter upon the consideration of the matters referred, nominate and appoint : so as the said arbitrators or umpire do make and publish his or their award or umpirage in writing under his or their hands of and concerning the premises, ready to be delivered to the parties or to either of them, or, if they or either of them shall be dead before the making of the award or umpirage, to their respective personal representatives who shall require the same, on or before the            day of            next, or on or before any other day to which the said arbitrators or umpire shall, by writing signed by him or them, endorsed on these presents, from time to time enlarge the time for making such award or umpirage ; and that the said A. B. and C. D., respectively, and their respective executors and administrators shall and will perform, fulfil and keep the said award or umpirage so to be made as aforesaid, and that the death of either of the said parties shall not operate as a revocation of the power and authority of the said arbitrators or umpire to make said award or umpirage ; and that all costs and charges of this reference and of the said award shall be in the discretion of the said arbitrators or umpire, who shall direct and award by whom and to whom and in what manner the same shall be paid ; And, further, that the said A. B. and C. D., and each of them, shall and will produce unto and deposit with the said arbitrators or umpire, all deeds, books, papers, evidences and writings, touching or relating to the matters in difference in their respective possessions or power as the said arbitrators or umpire shall think fit : And that each of them shall and will submit to be examined upon oath, if thought necessary by the said arbitrators or umpire, and will, as far as in them

lies respectively, do all such other acts and things as the said arbitrators or umpire shall require for the better enabling him or them to make the said award: And, further, that if either of the said parties shall obstruct or prevent the said arbitrators or umpire from making an award by affected or wilful delay, or by not attending after reasonable notice, and without such excuse as the said arbitrators or umpire shall be satisfied with and adjudge to be reasonable, it shall be lawful for the said arbitrators or umpire to proceed ex parte: And, further, that neither of them, the said A. B. and C. D., shall and will prosecute any action or suit in any Court of Law or Equity against the other of them, of and concerning the premises, until the said award be made and published: And, further, that this submission may be made a rule of Her Majesty's Court of [ ] if that Court shall so please: And, further, that the said arbitrators or umpire shall take the said arbitration at [ ] aforesaid, and shall have power to call for and examine all witnessess upon oath, and have the assistance of accountants in adjusting and ascertaining the state of the accounts of the said parties in difference.

In witness whereof, the said parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in  
the presence of

E. F.

A. B. [L. s.]

C. D. [L. s.]

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*Another Form.*

This Indenture, made the       day of       18   , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, disputes and differences have arisen, and are now depending, between the said parties of the first and second parts in reference to [*state matters in dispute*], and in order to put an end thereto, and to obtain an amicable adjustment thereof the said parties of the first and second parts have respectively agreed to refer the same to the award, order, arbitrament, final end and determination of U. V., of, etc., and X. Z., of, etc., arbitrators indifferently chosen, by and on behalf of the said parties respec-

tively: And in the event of the said two arbitrators hereby appointed not being able to agree within one month from the date of these presents upon their said award, then it shall and may be lawful for them to appoint some fit person as third arbitrator, by a memorandum, in writing, under their hands, to be endorsed on these presents; and the award of any two of them shall be final and conclusive, both at law and in equity, upon both of the said parties hereto: such award to be made in writing on or before the day of next.

Now this Indenture witnesseth, that the said parties hereto do, and each of them doth, each for himself severally and respectively, and for his and their respective heirs, executors and administrators, covenant and agree, well and truly to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament and final determination of the said arbitrators hereby appointed; or, in the event of it having been necessary to appoint such third arbitrator as aforesaid, to stand to, obey, abide by, observe, perform, fulfil and keep the award, order, arbitrament, and final determination of any two of them of and concerning the premises aforesaid or any thing in any manner relating thereto, so as such award be made in writing, under their hands, or under the hands of any two of them (in the event of any such appointment as aforesaid), on or before the day of next.

And it is hereby agreed, that the said arbitrators shall be at liberty, by writing under their hands, or the hands of any two of them, respectively endorsed on these presents, to enlarge the time for making the said award when and as often and to such times as they shall think fit. And also, that all the costs and charges attending the said arbitration shall be in the discretion of the said arbitrators hereby appointed, or in the event of such appointment of a third arbitrator as aforesaid, of any two of them so making their award as aforesaid, and shall be paid and satisfied pursuant to their award. And also, that these presents may be made a rule of Her Majesty's Court of [ ] at

And for the full performance of the said award so to be made as aforesaid, the said parties hereto bind themselves, severally and respectively, their several and respective heirs, executors and

administrators, each to the other of them respectively, in the penal sum of [ ] lawful money of Canada, firmly by these presents.

In witness whereof the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed and delivered in  
the presence of

E. F.

A. B. [L. s.]

C. D. [L. s.]

*Arbitration Bond.*

Know all men by these presents, That I, A. B., of, &c., am held and firmly bound to C. D., of, &c., in the penal sum of [ ] of lawful money of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made I bind myself, my heirs, executors, and administrators firmly by these presents.

Sealed with my seal. Dated this                  day of                  ,  
18 .

Whereas disputes and differences have arisen, and are now pending, between the above-bounden A. B. and the said C. D., touching and concerning [*state subject-matter in dispute as in submission.*]

And whereas the above bounden A. B., and the said C. D., have agreed to refer such disputes and differences, as well as all actions, suits, controversies, accounts, reckonings, matters, and things in anywise relating thereto, to the award, arbitrament and determination of U. V. and X. Z., arbitrators nominated, appointed and chosen as well by and on the part and behalf of the above-bounden A. B. as of the said C. D., and who have consented and agreed to accept the burthen of the said arbitration.

Now, the condition of the above-written bond or obligation is such, that if the above-bounden A. B. do and shall well and truly submit to, abide by, and perform, the award, arbitrament and determination of the said arbitrators so nominated, appointed and chosen as aforesaid, touching and concerning the matters in dispute between the above-bounden A. B. and the said C. D. and so referred to them the said arbitrators as aforesaid (provided such award be

made in writing under the hands and seals of the said arbitrators, ready to be delivered to the said parties, or such of them as shall apply for the same, on or before the            day of           , one thousand eight hundred and           ): Then this obligation shall be void, otherwise to be and remain in full force and virtue. And the said obligor hereby consents and agrees that this bond of submission and the award to be made thereunder shall and may be made a rule of court of any of the Superior Courts of this Province.

Signed, sealed and delivered  
in the presence of

A. B. [L. s.]

E. F.

[NOTE.—A similar bond must be executed by C. D., substituting C. D. for A. B. whenever the name occurs.]

#### *Appointment of an Umpire.*

We, the within-named U. V. and X. Z., do hereby nominate and appoint U. U., of           , to be umpire between us in and concerning the matters in difference within referred [on condition that he do, within            days from the date hereof, by some writing under his hand, accept the umpirage.]

Witness our hands this            day of           , 18           .

U. V.

Witness, W. W.

X. Z.

[NOTE.—The foregoing appointment should be endorsed on the arbitration deed or bond.]

#### *Enlargement of time for making Award.*

We, the undersigned arbitrators, by virtue of the power to us given for this purpose, do hereby appoint, extend, and (if a second enlargement, "further") enlarge the time for making our award until the            day of            next, on or before which said day our award in writing of and concerning the matters in difference within mentioned and referred to us shall be made and published.

In witness whereof, we have set our hands the            day of           , 18           .

Witness,

A. B.

W. W.

C. D.

[NOTE.—The observations appended to the last form apply to this and the two next forms.]

*Enlargement of Time by the Parties.*

We, the within-named A. B. and C. D., for ourselves severally and respectively, and for our several and respective heirs, executors and administrators, do hereby give, grant and allow unto the within-named arbitrators further time for making their award of and concerning the several matters within referred to them, until the day of next.

In witness whereof, we have hereunto set our hands [*or, if the submission was by bond or deed, say, "our hands and seals"*], the day of 18 .

Signed, (*or Signed, Sealed and Delivered*)  
in the presence of  
W. W.

A. B. [L. s.]  
C. D. [L. s.]

*Appointment of Third Person as Additional Arbitrator.*

We, the within-named U. V. and X. Z., do by this memorandum under our hands (made before we enter or proceed on the arbitration within mentioned) nominate and appoint Mr. X. Y., of the third person or arbitrator, to whom, together with ourselves all matters in difference between the said parties within mentioned shall be referred, according to the tenor and effect of the within submission.

Witness our hands this day of , 18 .  
Signed in the presence of  
Y. Z.

U. V.  
X. Z.

*Oath to be administered by Arbitrator to a Witness.*

You shall true answer make to all such questions as shall be asked of you by or before me touching or relating to the matters in difference between A. B. and C. D. referred to my award (*or "to the award of myself and G. H."*), without favor or affection to either party; and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.



having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine and direct that (&c., *conclude with a distinct statement of the arbitrator's decision on all the points referred to him*).

In witness whereof, I have hereunto set my hand this  
day of 18 .

Signed in the presence of  
W. W.

A. A.

*Award where the Submission was by Mutual Bonds.*

To all to whom these presents shall come, I, A. A., of, &c. send greeting; Whereas on , by a bond made and sealed with the seal of C. D., of, &c., he became held and firmly bound unto A. B., of, &c., in the penal sum of \$ : And whereas on the day and year aforesaid the said A. B., by another bond sealed with his seal, became held and firmly bound unto the said C. D., in the like penal sum, with conditions written under the said several bonds that the said A. B., his heirs, executors and administrators, should well and truly stand to, abide by, perform, fulfil, and keep the award, order, and final end and determination of me, A. A., an arbitrator indifferently named and elected as well on the part and behalf of the above bounden A. B., as the above bounden C. D., to arbitrate, award, order, judge and determine of and concerning (&c., *here set out such parts of the bond as bear upon the award, and state the enlargement, if any*). Now, I, the said A. A., having taken upon myself the burthen of the said arbitration, and having heard and duly and maturely weighed and considered the several allegations, vouchers and proofs made and produced on both sides, join pursuant of the said submission make and publish this my award of and concerning the said premises in manner following; that is to say, I do award, etc.

In witness, &c. (as in last form.)

Signed in presence of  
W. W.

A. A.



*Award where the Submission was by agreement, and stating an assent to an enlargement.*

To all to whom these presents shall come, we A. A., of, &c., and T. A., of, &c., send greeting: Whereas, by a certain agreement in writing under the hands of A. B., of, &c., and C. D., of, &c., bearing date on or about the       day of       last reciting that (&c., *here set out such parts of the agreement as bear upon the award* :) And whereas by an endorsement on the said agreement, bearing date on or about the       day of       last under the hands of all the said parties to the said agreement they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrators making the said award should be enlarged to the       day of       then next, and that they would in all other respects abide by the terms of the said agreement. Now know ye that we the said arbitrators having taken upon us the burthen of the said reference, and having examined all such witnesses as were produced before us by the said parties respectively, and having fully weighed and considered all the allegations, proofs and vouchers made and produced before us, do award [etc.]

In witness, etc., [*as in preceding forms.*]

Signed in the presence of  
W. W.

A. A.  
T. A.

*Clauses which may be inserted in an Award where they suit the circumstances.*

1. I award that C. D. do pay to A. B. the sum of \$       within  
     days after demand.
2. I award that A. B. do pay to C. D. the sum of \$       within  
     days after demand.
3. I award and direct that C. D. do, within one month after demand, pay to the said A. B. the sum of \$       , and that the said A. B. do, upon such payment, deliver to the said C. D. a good and sufficient conveyance in fee simple, free from incumbrances, of all and singular, &c., (*describe lands*).
4. I award and direct that the said A. B. do pay to the said C. D. the sum of \$       , and that thereupon the said A. B. and C. D.

do execute and deliver the one to the other good and sufficient releases of all claims and demands which they may have one against the other.

5. I award that the costs of the reference and award be paid by C. D. to A. B.

6. I award that each party bear his own costs of the reference, and that the costs of the award be paid by the said A. B. (or C. D., or in equal portions by the said A. B. and C. D.)

7. I award and direct that the said C. D. do pay to the said A. B. the costs incurred by the said A. B. of and incidental to the reference and award (*when the arbitrator is to ascertain the amount, add the following words*) and I assess the amount of the said costs of the said A. B. at \$ , and the costs of my award at \$ .

8. And I further award and direct that the said A. B. and C. D. do each bear his own costs of the reference, and pay one-half the costs of the award; and if either party shall, in the first instance, pay the whole or more than half of the costs of the award, the other party shall repay him so much of the amount as shall exceed the half of the said costs.

9. I award and direct that one moiety of the costs of the reference and award be borne and paid by A. B., and the other moiety by C. D.

*Affidavit of execution of Arbitration Bond.*

County of     }  
to wit:     }

I, Y. Z. of, &c., make oath and say,

1. That I was present and did see the annexed Arbitration Bond duly signed, sealed and delivered by the therein named A. B., and that I am the subscribing witness to the execution of the said bond.

Y. Z.

## ASSIGNMENTS.

An assignment, in its usual acceptation, is the written transfer of any kind of property, whether real or personal. The person making the assignment is called the *assignor*, and the person to whom it is made, the *assignee*.

Generally speaking, any interest in either lands or goods may be assigned; as, for instance, a lease, mortgage, or contract to purchase; or a draft or promissory note, bond, or policy of insurance.

An assignment of land, or of any interest in land, should be registered in the proper Registry Office. An assignment of goods and chattels, whether absolute, as a bill of sale, or conditional, as a chattel mortgage, not accompanied by immediate delivery and followed by an actual and continued change of possession, requires in most Provinces to be filed in the office of the County Clerk of the county or union of counties, wherein the goods are. This branch of the subject will be found more fully treated of subsequently under the heading **CHATTEL MORTGAGES AND BILLS OF SALE.**

An assignment of an interest in lands requires to be executed with the same formalities as other deeds. For a more extended notice of these formalities, the reader may refer to the chapter on **DEEDS.**

An assignment of the entire stock in trade, book debts, credits and effects of a trader is sometimes made to another person as trustee for creditors, for the pur-

pose of liquidating rateably the debts of the person making the assignment. Before the abolition of the Dominion Insolvent Act, it could also be, in certain cases, compelled. Upon this subject it may be only necessary to remark that where such assignment is made the utmost fairness and honesty should characterize the acts of the trader making the assignment, who should not conceal or retain any portion of his estate. Such an assignment will be valid if without preference to any creditor, but if otherwise, or if any fraud appear on the part of the assignor, it will be set aside.

The proper words to effect an assignment in conveyancing are, "assign, transfer and set over."

The following forms will be found to meet cases of common occurrence. In matters of difficulty, the services of a professional man should be procured.

*Assignment of Agreement to Purchase.*

*(To be endorsed upon or annexed to the Original.)*

Whereas, the within named C. D. hath duly paid to the within named A. B. the sum of \$ , being the amount of the first two instalments of the purchase money within mentioned, together with all interest upon such purchase money up to the day of last, according to the terms and provisions of the within-written articles, and there now remains to be paid the sum of \$ only, by equal annual instalments of \$ each, with interest from the day of last. And whereas, the said C. D. hath contracted and agreed with E. F., of, &c., for the sale to him of the within-mentioned premises (and the improvements thereon) and all his right and title thereto and estate and interest therein under or by virtue of the within-written agreement, at the price or sum of \$ , but subject nevertheless to the payment by him. the said E. F., his heirs, executors or administrators, unto the said A. B., his executors or administrators, of the said sum of \$

residue of the original purchase money aforesaid, and interest thereon from the period aforesaid, at the times and in manner within mentioned.

Now these presents witness, that in pursuance of such agreement and in consideration of the sum of \$ \_\_\_\_\_, of good and lawful money aforesaid, to him, the said C. D., in hand paid by the said E. F. at or before the execution hereof, the receipt whereof he, the said C. D., doth hereby acknowledge, he, the said C. D., hath sold, assigned, transferred, and set over, and by these presents doth sell, assign, transfer, and set over to the said E. F., his heirs and assigns, All and singular the within mentioned and described parcel or tract of land and premises, and therein described as being lot No. \_\_\_\_\_, in the \_\_\_\_\_ concession of \_\_\_\_\_, together with all the right, title, and interest of him, the said C. D. of, in, and to the within-written articles of agreement and covenants, and the lands and premises therein referred to, (and all improvements thereon,) and all benefit and advantage to arise therefrom, to have and to hold to the said E. F., his heirs, executors, administrators and assigns, for his and their own use and benefit forever.

And the said C. D. doth hereby make, ordain, authorize, constitute, and appoint the said E. F., his heirs, executors, administrators, and assigns, his true and lawful attorney and attorneys irrevocable for him, the said C. D., and in his name, but for the sole use and benefit of the said E. F., his heirs, executors and administrators, to demand, sue for, recover and receive of and from the within-named A. B., his heirs, executors or administrators, all such sum or sums of money and damages as shall or may at any time or times hereafter accrue or grow due to him, the said C. D., his heirs, executors, administrators or assigns, under or by virtue of the said recited articles of agreement and covenants, or any matter, clause, or thing therein contained, by reason or on account of the breach or default of him, the said A. B., his heirs, executors, or administrators, in relation thereto; the said C. D. hereby also covenanting with the said E. F., his heirs, executors and administrators, that he hath not done or suffered, nor will he do or suffer any act, matter or thing whereby the said E. F., his heirs, executors or administrators, shall or may be hindered or prevented from commencing and prosecuting any action or actions, suit or suits, at law or in equity, for the recovery of any principal money or damages under or by virtue of

the said articles of agreement and covenants referred to, or enforcing the performance of the said articles of agreement, or obtaining such other satisfaction as can or may be had or obtained for the same by virtue thereof; And the said E. F. doth hereby, for himself, his heirs, executors and administrators, covenant with the said C. D., his heirs, executors and administrators, that he, the said E. F., his heirs, executors or administrators, shall and will well and truly pay to the said A. B., his executors or administrators, the aforesaid sum of \$ , residue of the purchase money aforesaid, and all the interest thereon now or hereafter to become due, by the instalments and at the times mentioned and provided therefor in and by the said recited articles of agreement, and therefrom shall and will indemnify and forever save harmless the said C. D., his heirs, executors and administrators, and his and their goods and chattels, lands and tenements, by these presents.

In witness whereof the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of  
W. W.

C. D. [L.S.]  
E. F. [L.S.]

*Assignment of a Bond by Endorsement.*

Know all men by these presents, that for and in consideration of the sum of \$ lawful money of Canada, by E. F., of, &c., to the within-mentioned obligee, C. D., in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said C. D., hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer and set over, unto the said E. F., his executors, administrators and assigns, the within-written bond or obligation, and all principal and interest money thereby secured and now due or hereafter to become due thereon, and all benefit and advantage whatever to be had, made, or obtained by virtue thereof, and all the right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him, the said C. D., of, in; to, or out of the said bond and moneys, together with the said bond. To have, hold, receive and enjoy the said bond and moneys unto the said E. F., his executors, administrators and assigns, from henceforth, for his and their own use and benefit forever; And the

said C. D. doth hereby make, constitute, and appoint, and in his place and stead put and place the said E. F., his executors, administrators and assigns, the true and lawful attorney and attorneys irrevocable of him, the said C. D., in his name, but to and for the sole use and benefit of the said E. F., his executors, administrators and assigns, to ask, demand and receive of and from the within-named A. B., the obligor in the within-written bond or obligation named, his heirs, executors, administrators or assigns, all such principal and interest moneys as now are or shall from time to time or at any time hereafter be due upon the said bond, and to sue and prosecute any action, suit, judgment, or execution thereupon, and to acknowledge, make and give full satisfaction, receipts, releases and discharges for all moneys secured by the said bond and now due or at any time hereafter growing due thereon, and generally to do all and every such further and other lawful acts and things, as well for the recovering and receiving as also for the releasing and discharging of all and singular the said hereby assigned bond, moneys, and premises, as fully and effectually to all intents and purposes as he, the said C. D., his executors, administrators or assigns, could or might do if personally present and doing the same. And the said C. D. doth hereby, for himself, his executors and administrators, covenant and agree with the said E. F., his executors, administrators and assigns, to ratify, allow and confirm all and whatsoever the said E. F., his executors, administrators or assigns, shall lawfully do or cause to be done in or about the premises by virtue of these presents. And the said C. D., for himself, his executors and administrators, doth further covenant, promise and agree to and with the said E. F., his executors, administrators and assigns, by these presents, in manner following, that is to say: that the within mentioned sum of \$            remains justly due and owing upon the said bond, and that he, the said C. D., hath not received or discharged all or any of the said moneys due or to grow due on the said bond, nor shall or will release, nonsuit, vacate or disavow any suit or other legal proceedings to be had, made or prosecuted by virtue of these presents, for the suing for, recovering, releasing or discharging of the said moneys or any of them, without the license of the said E. F., his executors, administrators or assigns, first had and obtained in writing, nor shall or will revoke, invalidate, hinder, or make void these

presents, or any authority or power hereby given, without such license as aforesaid.

In witness whereof the said C. D. hath hereunto set his hand and seal the                      day of                      , 18 .

Signed, &c.,  
W. W.

C. D. [L.s.]

*Assignment (Ontario Crown Lands.)*

Know all men by these presents, that I, A. B., of the  
of                      , in the County of                      and Province of Ontario,  
for and in consideration of the sum of \$                      , of lawful  
money of the said Province, to me in hand paid by C. D., of the  
of                      , in the County of                      and Province  
aforesaid, at or before the date hereof, (the receipt whereof I do  
hereby acknowledge,) have bargained, sold, assigned, transferred  
and set over, and by these presents do bargain, sell, assign, transfer  
and set over to the said C. D., his heirs and assigns, all my estate,  
title, interest, claim and demand whatsoever, both at law and in  
equity, of, in and to that certain parcel or tract of land and  
premises situate, lying and being in the Township of                      , in  
the County of                      and Province aforesaid, containing by  
admeasurement                      acres, be the same more or less, being  
composed of                      Lot number                      in the                      Concession  
of the Township of                      aforesaid [insert if necessary, "subject  
to the conditions, as to settlement and otherwise, of the Crown  
Lands Department, which are to be performed."]

To have and to hold the same with all and every the benefit that  
may or can be derived from the said                      acres of land, unto  
the said C. D., his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal, this  
day of                      , 18 .

Signed, sealed and delivered  
in presence of

Y. Z.

A. B. [L.s.]

*Affidavit of Execution.*

County of                      , to wit: I, Y. Z., of the Township of  
in the County of                      , make oath and say. That I was personally present and did see the within named A. B. duly sign and seal,



and as his act and deed deliver, the within Assignment on the day of the date thereof, and that I, this deponent, am a subscribing witness thereto.

Y. Z.

Sworn before me at  
this                      day of                      18                      }

A. B.

a Commissioner for taking affidavits  
in and for said County.

*Assignment of Lease.*

This Indenture made the                      day of                      , one thousand eight hundred and                      , Between A. B., of, &c., of the first part, and C. D., of, etc., of the second part. Whereas, by an Indenture of Lease, bearing date on or about the                      day of                      , and made between J. K., of, &c., of the one part, and the said A. B., of the other part, the said J. K. did demise and lease unto the said A. B. the lessee therein named, his executors, administrators and assigns, all and singular that certain parcel or tract of land and premises, situate, lying and being, in the, &c. To hold the same, with the appurtenances, unto the said lessee, his executors, administrators and assigns, from the                      day of                      , one thousand eight hundred and                      , for and during the term of                      years from thence next ensuing and fully to be complete and ended, at the yearly rent of \$                      , and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

Now this Indenture Witnesseth, that in consideration of the sum of \$                      , of lawful money of Canada, now paid by the said party of the second part to the said party of the first part (the receipt whereof is hereby acknowledged), he the said party of the first part doth hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All and singular the said parcel or tract of land, and all other the premises comprised in, and demised by, the said herein-before in part recited Indenture of Lease, Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, together with all

houses and other buildings, easements, privileges and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein; Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say:

That notwithstanding any act of the said party of the first part, the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivering of these presents, a good, valid and subsisting lease in the law, and not surrendered, forfeited or become void or voidable; and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part up to the day of the date hereof.

And that, notwithstanding as aforesaid, the said party of the first part now has in himself good right, full power, and lawful and absolute authority to assign the said lands and premises, in manner aforesaid, and according to the true intent and meaning of these presents.

And that, subject to the said rent, and the lessee's covenants and agreements in the said lease contained, it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption or denial of the said party of the first part, his executors, administrators or assigns, or any other persons claiming under him or them, and that free and clear, and freely and clearly acquitted, exonerated, and discharged or otherwise, by and at the expense of the said party of the first part, his heirs, executors and administrators, well and effectually saved, defended and kept harmless, of, from and against all former

and other gifts, grants, bargains, sales, leases and other incumbrances whatsoever, of the said party of the first part, or any person claiming under him, them or any of them.

And that the said party of the first part, his heirs, executors, administrators and assigns and all other persons claiming any interest in the said premises, under him or them, shall and will, from time to time, and at all times hereafter, at the request and cost of the party of the second part, his executors, administrators or assigns, make, do, and execute, or cause and procure to be made, done and executed, all such further assignments and assurances in the law of the said premises for more effectually assigning and assuring the said premises for the residue of the said term, and any renewal thereof (if any), as by the said party of the second part, his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And the said party of the second part doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said party of the first part, his executors and administrators, that he or they, the said party of the second part, his executors, administrators or assigns, shall and will, from time to time, during all the residue of the said term granted by the said Indenture of Lease, pay the rent, and perform the lessee's covenants and agreements therein respectively reserved and contained, and indemnify and save harmless the said party of the first part, his heirs, executors and administrators therefrom and from all actions, suits, costs, losses, charges, damages, and expenses, in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]

C. D. [L.S.]

Received, on the date hereof, the sum of \$  
consideration above mentioned.

being the full con-

Witness,  
Y. Z.

A. B.

*Assignment of Lease.*

*(Shorter Form.)*

This Indenture, made the                      day of                      , one thousand eight hundred and                      , Between A. B., of, &c., of the first part, and C. D., of, &c., of the second part, Witnesseth, that in consideration of the sum of \$                      now paid to the said party of the first part, the receipt whereof is hereby acknowledged, he the said party of the first part, doth hereby assign unto the said party of the second part, his executors, administrators and assigns, All and singular the premises comprised in and demised by a certain Indenture of Lease, bearing date the                      day of                      , one thousand eight hundred and                      , and made between, &c., which said premises are more particularly known and described as follows, that is to say ; All and singular that certain parcel or tract of land and premises situate, lying, and being, &c., together with the appurtenances, To hold the same unto the said party of the second part, his executors, administrators and assigns, henceforth for and during the residue of the term of                      years from the                      day of                      , 18                      , thereby granted, and for all other the estate, term, and interest (if any) of the said party of the first part therein, Subject to the payment of the rent and the performance of the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

And the said party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant with the said party of the second part, his executors, administrators and assigns, that notwithstanding any act of the said party of the first part, he hath now power to assign the said premises in manner aforesaid. And that subject to the payment of the said rent, and the performance of the said lessee's covenants, it shall be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to hold and enjoy the said premises hereby assigned during the residue of the term granted by the said Indenture of Lease, without any interruption by the said party of the first part, or any other persons claiming under him, free from all charges and incumbrances whatsoever of him the said party of the first part. And that he, the said party of the first part, and all persons lawfully claiming under him will, at all times hereafter, at the

request and costs of the said party of the second part, his executors, administrators and assigns, assign and confirm to him and them the said premises for the residue of the said term as the said party of the second part, his executors, administrators, or assigns, shall direct.

And the said party of the second part, for himself, his heirs, executors and administrators, doth hereby covenant with the said party of the first part, his executors and administrators, that he, the said party of the second part, his executors, administrators or assigns, will, from time to time, pay the rent and perform the lessee's covenants in the said Indenture of Lease contained, and indemnify and save harmless the said party of the first part, his heirs, executors and administrators, from all losses and expenses in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.s.]

C. D. [L.s.]

*Assignment of Lease by Administrator.*

Know all men by these presents, that I, A. P., of, &c., administrator of all and singular the goods and chattels, rights and credits, of the within-named C. D. deceased, for and in consideration of the sum of \$ , lawful money of Canada, to me in hand well and truly paid by E. F., of, &c., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, transferred and set over, and by these presents do bargain, sell, assign, transfer, and set over, unto the said E. F., his executors, administrators and assigns, all and singular the parcel or tract of land and premises comprised in the within-written Indenture of Lease, and all the estate, right, title and interest which I, the said A. B., as administrator of the said C. D. as aforesaid, or otherwise, now have, or at any time hereafter shall or may have, claim, challenge or demand, of, in, or to, all or any of the said premises, by virtue of the said Indenture of Lease or otherwise, as administrator of the said C. D. To have and to hold the said parcel or tract of land, and all and singular other the premises, with their and every of their appurtenances,

unto the said E. F., his executors, administrators and assigns, for and during all the rest, residue, and remainder yet to come and unexpired, of the within-mentioned term of \_\_\_\_\_ years, subject, nevertheless, to the yearly rent of \$ \_\_\_\_\_ in and by the said Indenture of Lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes and agreements therein contained.

In witness whereof, I, the said A. B., have hereunto set my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Signed, &c., \_\_\_\_\_ A. B. [L.s.]

*Assignment from Trader to secure Debt.*

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand \_\_\_\_\_ eight hundred and \_\_\_\_\_, Between A. B., of, &c., of the first part, C. D., wife of the said A. B., of the second part, and E. F., of, &c., of the third part.

Whereas, the said party of the first part is justly and truly indebted unto the said party of the third part in the sum of \_\_\_\_\_ or thereabouts, and hath agreed to execute unto the said party of the third part an assignment of all his estate and interest in the real and personal estate and effects hereinafter mentioned, for the purpose of paying thereout or securing the payment of such indebtedness.

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of five shillings of lawful money of Canada, to the said party of the first part paid by the said party of the third part, at or before the execution of these presents (the receipt whereof is hereby acknowledged), he, the said party of the first part, hath granted, bargained, sold, released, conveyed, assigned, transferred, and assured, and by these presents Doth grant, bargain, sell, release, convey, assign, transfer and assure unto the said party of the third part, his heirs, executors, administrators and assigns, All and singular the real estate specified in the Schedule to these presents, marked A, and all the household goods, books, credits, furniture, stock in trade, bonds, bills, notes, books of account and securities for money, and all other the personal estate and effects, now belonging, due, or owing to him the said party of the first part, specified in the Schedule to these presents, marked B; the greater part of which are now in and upon the premises

upon which the said party of the first part now carries on his said business, and which said goods are forthwith, upon the execution of these presents, to be delivered into the possession of the said party of the third part, or his agent or agents in that behalf; and all reversions, remainders, rents, issues and profits, and all the right, title, interest, trust, possession, property, claim and demand whatsoever, at law or in equity, of him the said party of the first part, of, in, to, out of, or upon the same real and personal estate, goods, chattels, effects and property, respectively. Together with the appurtenances, and together with all books, writings, deeds, bills, notes and receipts, papers and vouchers, touching or concerning the said premises hereby assigned, or any part thereof.

To have and to hold, receive, take, and enjoy, the said real and personal estate, goods, chattels, stocks, moneys, credits, bonds, bills, notes, securities for money, and all and singular other the premises hereby conveyed and assigned, or intended so to be, unto the said party of the third part, his heirs, executors, administrators and assigns, henceforth forever, to and for his and their sole and only use, and as and for his and their own proper goods, chattels, moneys and effects absolutely.

Subject nevertheless, and to and for the intents and purposes following, that is to say:

That the said party of the third part, or his agent or agents in that behalf, do and shall with all convenient speed sell and dispose of the said real and personal estate, stock, chattels and effects, either together or in parcels, and either by public auction or private contract, for the best price or prices that can be reasonably obtained for the same, and either for ready money or for credit or otherwise, as shall be deemed most beneficial, the receipts of the said party of the third part being sufficient discharges for the same; and do and shall receive, collect and get in all and singular the credits and sums of money hereby assigned or intended so to be, and apply the said moneys to arise by such sale or sales, and to be received or collected as aforesaid, after payment of all costs, charges and expenses of these presents, and incidental thereto, and in carrying out the purposes thereof, or otherwise in relation thereto, in and towards the payment and liquidation in full of the said indebtedness of the said party of the first part to the said party of the third part, and after such payment do and shall pay the residue

and surplus, if any, to the said party of the first part, his executors, administrators or assigns, or as he or they shall direct.

And for the better carrying out of these presents, the said party of the first part doth hereby nominate and appoint the said party of the third part, his executors, administrators and assigns, the true and lawful attorney and attorneys of him the said party of the first part, for him and in his name to do, perform, and execute all such acts, deeds, matters, and things whatsoever in relation to all and singular the real and personal estate and effects and premises hereby assigned as aforesaid, as the said party of the third part may deem necessary for more effectually carrying into effect the true intent and meaning hereof; and that for the purposes aforesaid it shall be lawful for the said party of the third part, his servants and agents, to continue in and to occupy the said premises now in the occupation of the said party of the first part, until the trusts of this assignment are fully executed.

Provided also, that any collateral or other securities, by way of judgments or otherwise, which the said party of the third part now holds against the said party of the first part in respect of his said indebtedness or any part thereof, shall not be prejudiced or affected by this assignment, or otherwise than by payment of such indebtedness out of the proceeds to arise hereunder.

And provided, further, that the said party of the third part shall not be answerable or chargeable as implied trustee hereunder, except for wilful neglect or default.

And the said party of the second part, wife of the said party of the first part, in consideration of five shillings to her paid by the said party of the third part, hereby releases unto the said party of the third part all dower, and right or title to dower, in the said lands hereby conveyed and every part thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered

in the presence of

Y. Z.

A. B. [L.S.]

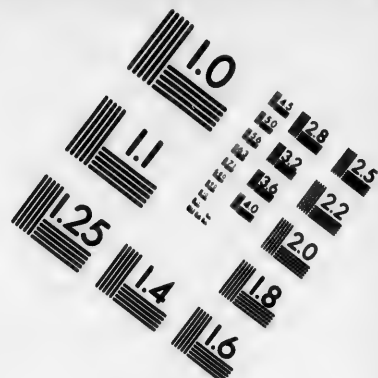
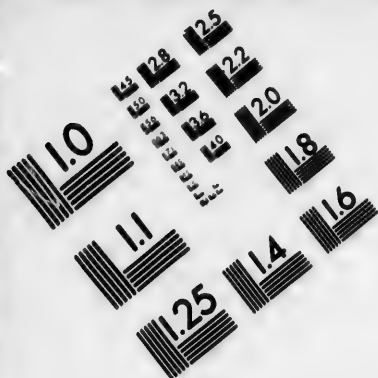
C. D. [L.S.]

E. F. [L.S.]

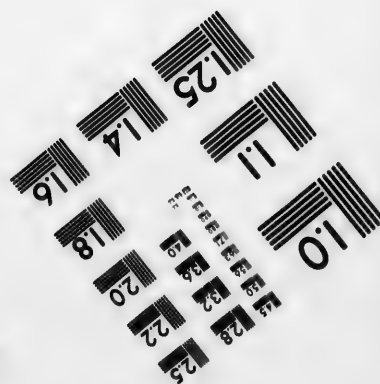
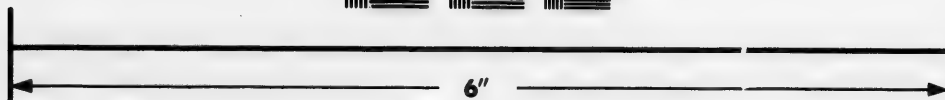
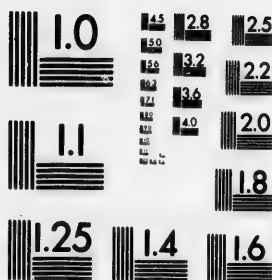
*Assignment of Judgment.*

This Indenture, made the                      day of                      18     , Between  
A. B., of, etc., of the first part, and C. D., of, etc., of the second part





# IMAGE EVALUATION TEST TARGET (MT-3)



Photographic  
Sciences  
Corporation

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

18 20 22 25 28 32 36 40 45 50

10

Whereas, the said party of the first part, on or about the day of , one thousand eight hundred and , recovered a judgment in the Court of for Ontario, at Toronto, for the sum of \$ against .

And whereas, the said party of the first part hath agreed to assign the said judgment, and all benefit to arise therefrom, either at law or in equity, unto the said party of the second part, in manner hereinafter expressed.

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of \$ , of lawful money of Canada, to the said party of the first part in hand paid by the said party of the second part, at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said party of the first part, Hath bargained, sold and assigned, and by these presents Doth bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, All that the said hereinbefore mentioned judgment, and all benefit to be derived therefrom, either at law or in equity, or otherwise howsoever.

To hold, receive and take the same, and all benefit and advantage thereof, to and for his and their own proper use, and as and for his and their own proper moneys and effects, absolutely.

And the said party of the first part hereby constitutes and appoints the said party of the second part, his executors and administrators, to be his true and lawful attorney and attorneys, at the proper costs and charges of the said party of the second part, his executors and administrators, to take and prosecute all and every remedy or proceeding at law or in equity, which the said party of the second part, his executors or administrators, shall hereafter consider advisable in reference to the said judgment, the said party of the second part, for himself, his heirs, executors, and administrators, hereby agreeing to indemnify and save harmless the said party of the first part, his heirs, executors and administrators, of and from all damages, costs, charges and expenses in respect thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered

in the presence of

Y. Z,

A. B. [L.s.]

C. D. [L.s.]

*Assignment of Mortgage.*

This Indenture, made the                      day of                      , one thousand eight hundred and                      , Between A. B., of the                      , in the County of                      and Province of Ontario,                      of the first part, and C. D., of the                      , in the County of                      and Province aforesaid,                      of the second part.

Whereas, by an Indenture of Mortgage bearing date the day of                      , one thousand eight hundred and                      , and made between E. F. of, etc., of the first part, and the said A. B. of the second part, it is witnessed, that in consideration of the sum of \$                      , of lawful money of Canada, to him the said E. F. paid by the said A. B., He, the said E. F., did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said A. B., his heirs and assigns, all and singular that certain parcel or tract of land and premises situate, lying and being in the, etc.; To have and to hold the same unto the said A. B., his heirs and assigns, forever, Subject, nevertheless, to a proviso therein contained for redemption upon payment by the said E. F. to the said A. B. of the sum of \$                      of lawful money aforesaid and interest, on the day and time and in manner therein mentioned.

And whereas, the sum of \$                      is now owing to the said A. B. on the said in part recited security, and the said A. B. hath agreed to sell and assign the said lands and premises, and all the moneys thereby secured, as well as the said Indenture of Mortgage, and all his interest therein, unto the said C. D. for the consideration hereinafter mentioned.

Now this Indenture witnesseth, that the said party of the first part to this Indenture, in consideration of the sum of \$                      , of lawful money of Canada aforesaid to him by the said party of the second part to this Indenture in hand paid, the receipt whereof he, the said party of the first part, doth hereby acknowledge, and of and from the same, and every part thereof, acquit, release and discharge the said party of the second part, his heirs, executors, administrators and assigns, forever; He, the said party of the first part, hath bargained, sold, assigned, transferred, and set over to the said party of the second part, his heirs, executors, administrators and assigns, the said principal sum of \$                      , so due and owing

to him as aforesaid, and secured by the hereinbefore in part recited Indenture of Mortgage, and also all future and other sums of money which from henceforth shall or may grow due by way of interest for or on account of the said principal sum of \$ . And also the said messuages and tenements, lands and premises, comprised in the said in part recited Indenture of Mortgage, and all the estate, right, title, interest, claim, and demand whatsoever of him, the said party of the first part, of, in, to, or out of the said premises or any part thereof, or the said principal and interest monies.

To have and to hold, receive and take, the said principal sum of \$ and interest, and all and singular other the premises hereby assigned, and every part thereof, unto the said party of the second part, his heirs, executors, administrators or assigns, to and for his and their own proper moneys, securities, and effects absolutely; And, for the more effectually enabling the said party of the second part, his executors, administrators and assigns, to recover and receive and said principal sum of \$ and interest, and to have and take the benefit of the security for the same, he, the said party of the first part, hath made, ordained, constituted, and appointed the said party of the second part, his executors, administrators and assigns, his true and lawful attorneys, to ask, demand, sue for, recover and receive from the said E. F., his executors, administrators, or assigns, or any other person or persons liable to pay the same, the said sum of \$ and interest, and to commence and prosecute any action, suit or other proceeding, either at law or in equity, for the recovery of the same, and on receipt of the said principal moneys and interest, or any part thereof, to give sufficient receipts and discharges; And to make, do and execute all or any other act, matter or thing, for recovering and receiving the said principal sum and interest; And the said party hereto of the first part, for himself, his heirs, executors, administrators and assigns, covenants with the party hereto of the second part, his executors, administrators and assigns, that the said principal sum of \$ is now owing to him, the said party hereto of the first part, under the said security, and that he has done no act or thing whereby the said principal sum of \$ is or has been received, released, discharged, or incumbered.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]  
C. D. [L.S.]

*Assignment of Mortgage.*

*(By Indorsement.)*

This Indenture, made the       day of       , one thousand eight hundred and       , Between C. D. within named, of the first part, and E. F., of, &c., of the second part, Witnesseth, that the party of the first part, in consideration of the sum of \$       , to him paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and assigned, and by these presents doth grant, bargain, sell and assign, to the party of the second part, his heirs, executors, administrators and assigns, all the right, title, interest, claim and demand whatsoever of him, the party of the first part, of, in and to the lands and tenements mentioned and described in the within mortgage, And also to all sum and sums of money secured and payable thereby and now remaining unpaid, To have and to hold the same, and to ask, demand, sue for, and recover the same, as fully to all intents and purposes as he, the party of the first part, now holds and is entitled to the same.

In Witness whereof, the parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

C. D. [L.S.]

*Assignment of Debts.*

This Indenture made the       day of       , 18       , Between A. B., of, etc., of the one part, and C. D., of, &c., of the other part:

Whereas, the said A. B. hath, for some time past, carried on the business of a Tailor, at       , aforesaid, and in the course of such business the several persons whose names are mentioned in the schedule hereunder written, have become indebted to him in the several sums of money set opposite to their respective names in

such schedule, and he hath contracted with the said C. D. for the absolute sale of the same debts for the sum of \$

Now this Indenture witnesseth that in consideration of \$ , to the said A. B., paid by the said C. D., on the execution hereof, (the receipt whereof is hereby acknowledged), He, the said A. B. doth hereby assign and transfer unto the said C. D., his executors, administrators and assigns, All and singular the several debts and sums of money mentioned in the schedule hereunder written, which are now due and owing to the said A. B. from the several persons whose names are mentioned in the same schedule. And all the right and interest, claim and demand whatsoever of the said A. B., to and in the same debts and premises. To have, receive and take the said debts, sums of money and premises hereby assigned unto and to the said C. D., his executors, administrators and assigns, for his and their own absolute use and benefit. And the said A. B. doth hereby absolutely and irrevocably constitute and appoint the said C. D., his executors, administrators and assigns, the true and lawful attorney and attorneys, of him the said A. B., his executors or administrators in his or their name or names, or otherwise to receive; and if the said C. D., his executors, administrators or assigns, shall deem it expedient so to do, to sue for and recover the said debts, sums of money and premises hereby assigned, or any of them; and when the same respectively, or any part thereof, shall be received, to give discharges for the same. And generally to perform all acts whatsoever which shall be requisite in order to give complete effect to the assignment hereby made, and to appoint a substitute or substitutes for all, or any of the purposes aforesaid, and such substitution at pleasure to revoke; the said A. B. hereby ratifying and confirming and agreeing to ratify and confirm whatsoever his said attorney or attorneys, or his or their substitute or substitutes, shall lawfully do in the premises. And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said C. D., his executors, administrators and assigns, that the said several debts hereby assigned, or intended so to be, are now due and owing to him, and that he, his executors or administrators will not at any time hereafter revoke the power or authority hereinbefore contained, or receive, compound for or discharge the said several debts, or any, or either of them, or any part thereof respectively, or release or interfere in any action or suit

which shall or may be commenced in his, their, or either of their names, in pursuance of these presents, for the recovery of the same, without the consent in writing of the said C. D., his executors, administrators or assigns, but will at all times avow, justify and confirm all such matters and things, process and proceedings, as the said C. D., his executors, administrators or assigns, or any other person or persons, by or through his or their direction or procurement, shall in pursuance of the power hereinbefore contained, do, commence, bring or prosecute upon, or by reason or means of the said debts and premises; and further that he, the said A. B., his executors and administrators, will at all times hereafter on the request, and at the costs of the said C. D., his executors, administrators or assigns, make, do and execute all such further assignments, letters of attorney, acts, deeds, matters and things, for the more effectually assigning and assuring unto the said C. D., his executors, administrators and assigns, the said several debts and premises, and enabling him or them to recover and receive the same respectively, for his and their own absolute use and benefit in manner aforesaid, according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators or assigns, shall be reasonably required. And the said C. D. doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said A. B., his executors and administrators, that he, the said C. D., his executors, administrators or assigns, will at all times hereafter save harmless, and keep indemnified the said A. B., his executors or administrators, from and against all losses, costs, charges, damages and expenses, by reason of his or their name or names being used in any action, suit or other proceeding, which shall or may be brought or instituted by the said C. D., his executors, administrators or assigns, or his or their substitute or substitutes under or by virtue of the power or authority in that behalf hereinbefore contained, or otherwise by reason or in consequence of the same power or authority, or in relation thereunto.

In witness, etc.,

Signed, etc.,

Y. Z.

A. B. [L.S.]

C. D. [L.S.]



THE SCHEDULE to which the above-written Indenture refers.

Name of Debtor.	Amount of debt.	Name of Debtor.	Amount of debt.
John Smith	\$100 00	Henry Bastion	\$118 25
William Jones	\$150 00	&c.	
John Jacobs	\$200 00	&c.	

Received on the day of the date of the above written Indenture of the above named C. D., the sum of \$ , being the consideration money above mentioned to be paid by him to me.

Witness,

A. B.

Y. Z.

NOTE.—In all cases, where the consideration for a deed is money paid by the one party to the other, a receipt, in the above form, should be written upon the instrument, and signed and witnessed.

*Another Form.*

Know all men by these presents, that I, A. B., of, etc., in consideration of the sum of \$ paid to me by C. D., of, etc., (the receipt of which is hereby acknowledged) do hereby sell, assign and transfer, unto the said C. D., his executors, administrators and assigns, all my claims and demands against E. F., of, etc., for debt due to me and all actions against the said E. F., now pending in my favour and all causes of action whatsoever against him.

And I do hereby nominate and appoint the said C. D., his executors, administrators and assigns, my attorney or attorneys irrevocable, and do give him and them full power and authority to institute any suit or suits against the said E. F., and to prosecute the same, and any suit or suits which are now pending, for any cause or causes of action in favour of me, against the said E. F., to final judgment and execution; and such execution to cause to be satisfied by levying the same on any real or personal estate of the said E. F. in due course of law, and the proceeds thereof to take and apply to his or their own use; but it is hereby expressly stipulated that all such

acts and proceedings are to be at the proper costs and charges of the said C. D., his executors, administrators or assigns, without expense to me.

And I do further empower the said C. D., his executors, administrators and assigns, to appoint such substitute or substitutes as he or they shall see fit, to carry into effect the objects and purposes of this authority, or any of them, and the same to revoke from time to time, at his or their pleasure, I, the said A. B., hereby ratifying and confirming all the lawful acts of the said C. D., his executors, administrators and assigns, in pursuance of the foregoing authority.

Witness my hand and seal this                      day of                      18 .

Signed, sealed and delivered  
in the presence of    A. B. [L.s.]  
Y. Z.

*Assignment of a Policy of Fire Insurance by Indorsement.*

Know all men by these presents, that I, the within named A. B., in consideration of the sum of \$                      to me paid by C. D., of, etc., (the receipt whereof is hereby acknowledged) have assigned and transferred, and by these presents do absolutely assign and transfer unto the said C. D., his executors, administrators and assigns, All my right, title and interest to and in the within policy of insurance, with full power to use my name so far as may be necessary to enable him fully to avail himself of the interest herein assigned, or hereby intended to be assigned, but at his own costs and charges.

As witness my hand and seal, this                      day of                      18  
in the presence of    A. B. [L.s.]  
Y. Z.

*Assignment by Bill of Sale of Goods.*

This Indenture made the                      day of                      18 , Between A. B., of, etc., (*vendor*), of the one part, and C. D., of, etc., (*purchase*), of the other part.

Whereas, the said A. B. hath contracted with the said C. D. for the absolute sale to him of the goods, chattels, furniture and effects comprised in the schedule hereunder written or hereto annexed, and now on the premises situate at, etc., (*describe the place*), at or for the price or sum of \$                      . Now this Indenture witnesseth, that in

pursuance of the aforesaid agreement, and in consideration of the sum of \$ \_\_\_\_\_, now paid to the said A. B. by the said C. D., the receipt whereof is hereby acknowledged, He, the said A. B., by these presents doth assign and set over unto the said C. D., his executors, administrators and assigns, All and singular the household furniture, goods, chattels and effects comprised and set forth in the schedule hereunder written or hereunto annexed, and all the advantages thereof, and all the right, title, interest, possibility, property, claim and demand of him, the said A. B., into, out of or upon the said furniture, goods, chattels and effects, and every part thereof. To have, hold, receive and take the said furniture, goods, chattels and effects hereby assigned or expressed, or intended so to be, unto the said C. D., his executors, administrators and assigns absolutely. And the said A. B. doth hereby for himself, his heirs, executors and administrators covenant with the said C. D., his executors, administrators and assigns, that he, the said A. B., now hath in himself absolute authority to assign the several premises hereby assigned or expressed and intended so to be, unto the said C. D., his executors, administrators and assigns, in manner aforesaid: And that the said A. B., his executors and administrators, and all persons claiming under him and them, shall at any time or times hereafter, on the request, and at the costs and charges of the said C. D., his executors, administrators and assigns, do and execute all such acts and assurances for more effectually assuring the said premises hereby assigned or expressed, and intended so to be, unto the said C. D., his executors, administrators and assigns, and placing him and them in possession of the same in manner aforesaid and according to the true intent and meaning of these presents, as by him or them, or his or their counsel in the law shall be devised, advised and required.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]

THE SCHEDULE referred to in the above written Indenture.

(Here set out a full and particular description of the goods—they must be described with such detail as to render them easy of identification.)

*Another Form.*

This Indenture, made            day of            18    , Between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, the said party of the first part is possessed of the chattels hereinafter set forth and enumerated and hath contracted with the said party of the second part, for the sale to him of the same, at the sum of \$

Now this Indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of \$            of lawful money of Canada, now paid by the said party of the second part to the said party of the first part, (the receipt whereof is hereby acknowledged), He, the said party of the first part, hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All those the said chattels and effects following, that is to say, (*here enumerate the several articles intended to be assigned with such certainty as that they may be easily identified.*) And all the right, title, interest, property, claim and demand whatsoever, both at law and in equity or otherwise howsoever, of him the said party of the first part, of, in, to and out of the same, and every part thereof.

To have and to hold the said hereinbefore assigned premises and every part thereof, with the appurtenances, and all the right, title, and interest of the said party of the first part therein as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns to and for his and their sole and only use forever.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in manner following, that is to say :

That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned premises and every part thereof, and that the said party of the first part now has in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents ; And that the said party hereto of the second part,

his executors, administrators and assigns, shall and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned premises and every part thereof to and for his and their own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever, of, from or by him, the said party of the first part, or any person or persons whomsoever: And that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever; And, moreover, that he, the said party of the first part, and all persons rightfully claiming or to claim any estate, right, title or interest of, in or to the said hereby assigned premises or any part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of the said party of the second part, his executors, administrators, or assigns, but at the costs and charges of the said party of the second part, make, do and execute or cause to be made, done and executed all such further acts, deeds, and assurances for the more effectually assigning and assuring the said hereby assigned premises unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators or assigns, or his or their counsel, shall be reasonably advised and required.

In witness, etc.

A. B. [L. s.]

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## AUCTIONS AND AUCTIONEERS.

AN AUCTIONEER is a person who is authorized to sell goods or merchandise or lands at public auction or sale for a recompense, or (as it is commonly called) a commission. He cannot buy: he can only sell. Primarily, he is deemed in law the agent of the seller of the goods only; but for certain purposes he is also deemed to be the agent of both buyer and seller. Thus, by knocking down the goods sold to the person who is the highest bidder, and inserting his name in his book or memorandum, he is considered as the agent of both parties; and the memorandum so made by him will bind both parties, as being a memorandum sufficiently signed by an agent of both parties within the Statute of Frauds before referred to in the chapter on Agreements. Before the knocking down of the goods, he is, indeed, exclusively the agent of the seller; but after the knocking down, he becomes also the agent of the purchaser, and the latter is presumed in law to give him authority to write down his name as purchaser. An auctioneer has also a special property in the goods sold by him, and a lien on the same and on the proceeds thereof, for his commission; and he may sue the purchaser at the sale in his own name, as well as in the name of his principal. An auctioneer can sell only for ready money, unless there be some usage of trade to sell on credit, or unless the terms of sale are on credit.

Auction sales should be conducted with the strictest fairness, and due notice of the sale ought to be given. Every bona fide bid should be taken down. Before proceeding to sell, the conditions of sale ought to be

read or announced. Usually these conditions are written or printed ; but the verbal declarations of the auctioneer at the sale, where they do not contradict the written conditions, are binding.

Although the entry by the auctioneer in his book is a sufficient memorandum to bind both seller and buyer, yet in every sale of land it is usual to have agreements of sale and purchase signed by auctioneer and purchaser.

Forms of such agreements, and ordinary conditions of sale, are subjoined. It is proper to have the written and signed agreement endorsed on, or attached to, the particulars and conditions of sale.

In Ontario, under the Consolidated Municipal Act, 1883, sec. 495, by-laws may be passed by the council of any county, city and town separated from the county for municipal purposes, for licensing, regulating and governing auctioneers and others who sell goods, wares, merchandize and effects by public auction, and to fix the sum to be paid for every such license, and the length of time it shall be in force.

Sales of land in Ontario must be without reserve, unless the contrary is stated in the particulars or conditions of sale. If the vendor, or seller, reserves the right to bid, this fact must be similarly disclosed ; otherwise the auctioneer is not at liberty to receive any bid from the vendor, or any agent of his.

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#### FORMS.

##### *Memorandum to be signed by an Auctioneer, after a Sale of Land.*

I hereby acknowledge that A. B. has been this day declared by me the highest bidder, and purchaser of [*describe the land*] at the sum of \$ , [or at the sum of \$ per acre or foot,] and that he has paid into my hands the sum of \$ as a deposit,

and in part payment of the purchase money, and I hereby agree that the vendor, C. D., shall in all respects fulfil the conditions of sale hereto annexed.

Witness my hand, the

day of

, 18 .

T. B., Auctioneer.

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*Memorandum to be signed by Purchaser.*

I hereby acknowledge that I have this day purchased at public auction all that [*describe the land*] for the sum of \$ , [or for the price of \$ per acre or per foot,] and have paid into the hands of T. B., the auctioneer, the sum of \$ as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of \$ , unto C. D., the vendor, at , on or before the day of , and in all other respects on my part to fulfil the annexed conditions of sale.

Witness my hand, this

day of

, 18 .

A. B.

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*Conditions of Sale of Goods.*

1. The highest bidder to be the purchaser; and if any dispute shall arise as to the last or highest bidder, the property shall be immediately put up again at the former bidding.

2. No person to advance less than \$ at a bidding.

3. The purchasers to give in their names, and places of residence (*if required*), and pay down a deposit of per cent. in part payment of purchase money; in default of which, the lot or lots so purchased will be immediately put up again and re-sold.

4. The lots to be taken away at the buyer's expense, within three days after, and the remainder of the purchase money to be paid on or before delivery.

5. Upon failure of complying with these conditions, the deposit money shall be forfeited; and all lots uncleared within the time aforesaid shall be resold by public auction or private sale, and the deficiency, if any, on such re-sale shall be made good by the defaulter.



*Conditions of Sale of Land.*

1. The highest bidder shall be declared the purchaser; and if any dispute shall arise as to the last or highest bidder, the property shall be immediately put up again at the former bidding.

2. No person shall advance at any one bidding less than \$ , or retract his or her bidding; and the vendors, by themselves or their agent, shall be at liberty to bid once for the property.

3. The purchaser shall pay, immediately after the sale, to the vendors' solicitor, a deposit of                      per cent. in part payment of the purchase money, and sign an agreement for the payment of the remainder on or before the                      day of                      , 18 . The premises will be sold subject to all defects or imperfections of title, if any, subsisting before the commencement of the title of the present vendors, and not occasioned by any act done by them or any person claiming under or in trust for them; [and subject also to the several mortgages outstanding appearing on the certificate of the registrar of the county of                      , which will be produced at the time of sale.]

4. The purchaser shall accept a conveyance from the vendors, to be prepared at his own expense, on payment of the remainder of the purchase money; and possession will be given on completion of the purchase: from which time the purchaser shall be entitled to the rents and profits. But if, from any cause, the remainder of the purchase money shall not be paid on the                      day of                      , 18 , the purchaser shall pay interest for the same at the rate of                      per cent. from that day to the day of payment; but, nevertheless, this stipulation is without prejudice to the vendors' right of re-sale under the last of these conditions.

5. If any mistake be made in the description of the property, or there be any other error in the particulars of sale, the same shall not annul the sale, but a compensation or equivalent shall be given, or taken, as the case may require, according to the average of the whole purchase money (on such error or mis-statement being proved): such compensation or equivalent to be settled by two referees or their umpire—one referee to be chosen by each party, within ten days after notice given of the error, and the umpire to be chosen by the referees immediately after their appointment.

6. The purchaser shall not be entitled to the production of any title deeds other than such as are in the vendors' hands, [or in the hands of the several mortgagees.]

7. Upon failure of complying with the above conditions, the deposit shall be forfeited, and the vendors shall be at full liberty (with or without notice) to re-sell the property by public auction or private sale; and if, on such re-sale, there should be any deficiency, the purchaser shall make good such deficiency to the vendors, together with all expenses attending such re-sale; the same to be recoverable as liquidated damages.

[NOTE.—Special conditions may be necessary to meet particular cases; but the above conditions will meet ordinary cases. Except in very plain and simple cases, the services of a professional man should be procured.]

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*The Standing Conditions of the High Court of Justice in Ontario,  
for Sales of Lands.*

1. No person shall advance less than \$10 at any bidding under \$500, nor less than \$20 at any bidding over \$500; and no person shall retract his bidding.

2. The highest bidder shall be the purchaser, and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the suit, with the exception of the vendor, and (naming any parties) are to be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit in the proportion of \$10 for every \$100 of his purchase money to the vendor or his solicitor, and shall pay the remainder of the purchase money on the day of next; and upon such payment the purchaser shall be entitled to the conveyance, and to be let into possession; the purchaser at the time of such sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and shall tender the same for execution.

6. If the purchaser fail to comply with the conditions aforesaid, or any of them, the deposit and all other payments thereon shall be forfeited, and the premises may be re-sold, and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

## BILLS OF EXCHANGE, PROMISSORY NOTES AND CHEQUES.

A PROMISSORY NOTE is a promise or engagement in writing to pay a specified sum of money at a time therein stated, or on demand, or at sight, to a person therein named, or his order, or to the bearer. The person who makes the note is called the *drawer*, or *maker*; the person to whom it is payable, the *payee*; the person endorsing it, the *endorser*, and he to whom the endorser transfers his interest therein by such endorsement, the *endorsee*. The person in whose possession it is, is called the *holder*. Minors cannot be parties to a note or bill of exchange.

To constitute a valid promissory note, the following facts are requisite: It must be in writing; the promise to pay must be an absolute, and not a conditional promise; it must promise to pay money; and the amount must be fixed and certain, and payable at a fixed period of time or upon some event which must certainly occur. If no time is fixed in the note for its payment, it is payable on demand; if payable to a fictitious person, it is payable to the bearer if not aware of the fact. If it bears no date, the time will run from the first day it can be proved by evidence the note was in existence.

No precise form of words is indispensable. Equivalent expressions may be used for both the words *promise* and *pay*, if the meaning is preserved; but, to run no risks, it is well to use the common forms and words, which are given hereinafter.

A note signed by more than one person is either joint, or joint and several. If two or more persons desire to become responsible so that one cannot be sued upon it without the other or others, the note should read, "We jointly, but not severally, promise." If each intends to become responsible for the whole debt without regard to any defence the others might have or subsequently acquire to resist payment, it should run thus, "We jointly and severally promise;" the holder may then sue all jointly or each separately, at his election. If the note reads simply, "I promise," etc., and is signed by several makers, it is several as well as joint.

*Stamps* are no longer necessary to be affixed to a bill or note.

An *accommodation note* is one upon which the maker receives no consideration, but which he makes for the purpose of lending the payee, or other party, his credit to enable the payee to raise money thereupon. Upon such a note the party for whose accommodation it was made cannot recover from the person thus lending him the use of his name; but if it is endorsed for value by the former to a third person, that third person may recover from the original maker or party lending his name and credit, the amount he has advanced upon it, even though such third person is aware that the transaction was an accommodation. If a person, at the time of taking any note (except an accommodation note), has notice that it is void in the hands of the payee upon any legal grounds, he places himself, by such taking, in precisely the same position as the payee, unless some intermediate endorser or transferor between him and the maker had not such notice or knowledge.

If the holder took the note innocently, and for value, and without knowledge of transactions affecting its validity, he may recover upon it, unless, indeed, the note be a forgery, when it is altogether void as to all parties. Various circumstances will render a note void; thus, if obtained by fraud, or founded upon a fraudulent consideration, it is void. So if an unfair advantage is taken of the maker, or the note procured from him when intoxicated. Also, if the consideration is an illegal one, as contrary to general public policy, or statute, as for future illicit intercourse, to bribe a public officer, or for a wager, or gaming debt, or the suppression of criminal proceedings. But a note given for past seduction is good. A material alteration in any part of the note, as in the date, amount, or time of payment discharges all parties not aware of and consenting to such alteration.

Where a note is transferred after it is dishonoured or is overdue, it is taken (even though value be given for it) subject to all equities, or rights of set-off which would attach to it as against the original payee, and the holder can recover no more than the original payee could have recovered, save in the case of accommodation endorsements.

Notes bear interest from date only where it is so expressed on the face of them. Otherwise they bear interest, in most Provinces, from the time action may be brought on them, that is, when they become payable. If payable on demand, or at sight, presentment must be made before interest will run. If interest at a greater rate than the legal rate is agreed to be paid, the rate should be specially mentioned upon their face.

A general endorsement is effected by the endorser's

writing his name on the back of the note; this evidences an agreement to pay the note in the event of a refusal by the maker to pay, and of prompt notification thereof to the endorser. A special endorsement is effected by a written direction, upon the face of the note, that payment is to be made to a particular person; as, "Pay to George Brown or order." If the endorser wishes to be free from all liability, he should add to his endorsement the words, "without recourse." A note payable to A. B. without adding the words "or order," or "or bearer," is not negotiable; that is, A. B. alone can receive payment of it.

The endorsement of a note passes no property, unless the endorser had, at the time, a legal property in it. When payable to a married woman, the note is properly transferred by the endorsement of her husband, unless it represents her own separate property or earnings, when, in any Province where she has by statute such a right, she may endorse it; if payable to a firm or partnership, any member of the firm may endorse it if the firm is continuing, but if the firm has been dissolved each member or his representatives must endorse; if payable to several persons, not partners, the endorsement must be by all of them; upon insolvency of the payee, his assignee is the proper person to endorse, and after his death, his executors or administrators.

By endorsement of a note, the endorser becomes merely security that the maker shall pay it when due. If the holder neglects to demand payment, or receives part of the money from the maker, giving further time for the balance, the endorser, unless he has expressly consented, is discharged from all liability. Whatever

discharges prior endorsers will also discharge all subsequent endorsers. To hold the endorser, payment of the note must be promptly demanded of the maker when the note is due, if such demand can be made. Neglect to make any demand will not be excused by the insolvency or death of the maker; if dead, the demand should be made on the executor or administrator, or at the residence of the deceased. If the maker has left the country, demand should be made at his dwelling-house or last place of business.

On all notes save those payable on demand three days (called days of grace) beyond the time appearing on the face of the note are allowed within which payment may be made. These days of grace are reckoned exclusive of the day when the note would otherwise fall due, and without deduction of Sundays or holidays. If the last day falls on a Sunday or other non-juridical day (commonly called a Bank-holiday) the note will become due upon the day next following which is not a non-juridical day. Thus a note due (or of which the last day of grace falls upon) the twenty-fifth day of December, is payable, in Canada, on the twenty-sixth, unless the latter day chance to be a Sunday, or other holiday, when it is due upon the twenty-seventh or next juridical day. In computing days of grace, the day of the date of the note is not reckoned. The word "month" in a note or draft means *calendar*, and not *lunar*, month; thus, a note at one month, dated the thirty-first day of January, falls due three days after the twenty-eighth day of February, or, in Leap-year, the twenty-ninth.

In Canada, non-juridical days, or Bank-holidays, are as follows:—Sundays, New-Year's Day, Good Friday,

Christmas Day, the day appointed to celebrate the Birth-day of the reigning Sovereign, and any day appointed by proclamation for a public holiday, or for a general fast or thanksgiving throughout the Dominion ; and the days next following New-Year's or Christmas, when either of these days falls upon a Sunday. Also, in the various Provinces, any day appointed by the Lieutenant-Governor of the Province for a public holiday, or for a public fast or thanksgiving to be observed in the particular Province. In the Province of Quebec, various other days, in addition to those above mentioned, are non-judicial days.

The presentment necessary to charge an endorser must be carefully attended to, both as to place and time, and as to the person to whom presentment must be made. The note must be presented on the very day it falls due. If payable at a bank, and the holder is there on that day until the hour for closing, demanding payment, this will be sufficient to charge the endorser. If expressed on its face to be payable at a particular bank, or other place, and "not otherwise or elsewhere," presentment must be made there, but if these words be not inserted presentment to the maker in person at any place will be sufficient to charge him ; if no place of payment be named in the note, it must be presented either to the maker personally, or, during business hours, at his usual place of business, or, within reasonable hours, at his dwelling house. If payable by a firm, a presentment to any one partner, or at the firm's usual place of business, is good ; but payment of a joint note, not made by partners, must be demanded of all the makers severally. Even though the note has been lost, or mislaid, or accidentally destroyed, the holder



must still make a regular and formal demand, tendering a sufficient indemnity if required by the party paying, to protect that party in making the payment. A lost note or draft, not yet due, should be advertised in the public press, to prevent its being transferred to an innocent holder.

The demand must be made upon the last of the days of grace; an earlier demand is of no validity. Notes payable at sight, or on demand, must be presented within a reasonable time, to charge the endorser. The question of what is a reasonable time will be determined by the circumstances of each case.

Where payment is, upon proper presentment, refused, the holder must promptly notify the endorsers, and inform them that he will hold them liable for the payment of the note. Should this be neglected, the endorsers will be no longer liable. In the case of an inland note, a notice, either verbal or written, by the holder personally or by his agent, is sufficient; but in the case of a foreign note, it is necessary (and in both cases it is advisable) to place it in the hands of a Notary Public, inasmuch as the law provides that the protest and certificate of such public officer shall be *prima facie* evidence of the facts therein contained. He is also responsible to the holder for any neglect in giving the proper notices. In Nova Scotia, only inland bills and notes of or beyond the amount of \$40 may be protested so as to render the protest *prima facie* evidence as above.

By the Dominion Statute, 37 Vict. cap. 47, it is provided as follows:—"Notice of the protest or dishonour of any bill of exchange or promissory note payable in Canada, shall be sufficiently given, if ad-

dressed, in due time, to any party to such bill or note entitled to such notice, at the place at which such bill or note is dated, unless any such party has, under his signature, on such bill or note, designated another place, when such notice shall be sufficiently given if addressed to him, in due time, at such other place; and such notices, so addressed, shall be sufficient, although the place of residence of such party be other than either of such before mentioned places." Should any party, since the date of his signature, and to the knowledge of the holder, have died or become insolvent, the notice should be addressed to his proper representatives, or assignee, if any.

As regards the time within which such notice of dishonour is to be given, the law is as follows :—Where both parties reside in the same city or town, notice must be given or posted to the endorser at furthest on the next business day after presentment and dishonour; where they reside at different places, the notice must be mailed the day after the dishonour, at latest, or by the next mail after the dishonour. If there are several endorsers, each is allowed a day after himself receiving notice, to notify the endorser prior to himself. The notice should in its terms be full and exact, informing the party to whom it is given of the non-payment, and that the party giving it looks to him for payment.

A BILL OF EXCHANGE (sometimes termed a draft) is an order in writing by one person upon another, to pay a sum of money therein mentioned, to a third person, on demand, or at some future time therein specified. The person signing the bill is called the drawer; the person on whom the order is made, the drawee; if the latter, or another person, accepts the bill, he is called

the acceptor; the party in whose favour the bill is made, is called the payee; any person who writes his name on the back of it, an endorser; he to whom it is transferred by such writing, the endorsee; and any party in possession of the bill and entitled to receive the money upon it, the holder.

Bills of exchange are either foreign or inland: foreign when drawn by a person out of Canada upon another within Canada, or drawn in Canada and payable abroad; or drawn by a person in a foreign country upon another in another foreign country; or, as generally understood, by a person in one Province upon another in another Province. The same principles of law may be said generally to govern foreign and inland bills alike, but one difference is that foreign bills must be protested for non-acceptance, or non-payment, while inland bills need not. It is also observable that the laws and business customs of the foreign country in which a foreign bill is drawn or payable, or in which the party to be charged resides, may, even in Canadian Courts, regulate certain particulars of the contract, as the time of payment, formalities of protest and of notices, etc.

Foreign bills of exchange sometimes consist of several parts, usually three, supposed to be mailed at different dates, called a set, each part containing a condition that it shall be paid only if the others remain unpaid; the whole set, however, making but one bill. Each part ought to be delivered to the payee. The principles of law already enunciated as applying to promissory notes apply also, in large part, to bills of exchange.

As with regard to promissory notes, no precise form

of words is required to constitute a bill of exchange, though generally adopted and recognized forms had best be followed. To make a bill negotiable, the words, "or order," or other similar words, should appear on its face.

It is safer to present all bills for acceptance, although, unless payable at sight, or at so many days after sight, or after demand, presentment for payment is all that is absolutely necessary. An acceptance of an inland bill must be in writing upon the bill, and should be signed by the acceptor. It may vary the terms of the bill as to place of payment, or even time or amount; but if the acceptance vary from the express terms of the bill, the holder has a right to treat the bill as dishonoured. If he choose to take a qualified or partial acceptance, he should at once notify the other parties. A bill cannot be drawn payable upon a contingency, or condition, but may be so accepted, if the holder is willing.

Should acceptance be refused, the bill should be protested at once for non-acceptance, and the drawer and endorsers notified.

After a bill has been protested for non-acceptance, any person not already a party to the bill may accept it, as it is called, "for honour" or "supra protest," for the honour of the bill generally, or of some particular party to it. This evidences a conditional undertaking to pay the bill if the drawer do not, and may be given where, after the ordinary acceptance, the acceptor becomes insolvent or absconds. Such acceptance enures to the benefit of all parties subsequent to him for whose honour it is given. The acceptor for honour is entitled to notice of non-payment.

Endorsements may be written either upon the face,

or on the back of a bill. They may be written in pencil. If the endorsement is a mere signature of the party transferring, without any other words, it is called an endorsement in blank. Where the words "Pay A. B." or "Pay A. B., or order," are written, this is termed a special endorsement. Bills and notes may be endorsed before they are complete. If a bill not due be paid, but left in the holder's hands, a person taking it before it is due, in good faith and without notice of the payment, may sue upon it.

An endorsement may be restrictive, and stop the negotiability of a bill, as, "Pay C. D., or order, for my use;" or it may be qualified, as "without recourse," so as to exempt the endorser from personal liability in case of dishonour.

An agent or partner should endorse in the same form as that in which he draws a bill. The *place* where a bill is drawn need not be stated, or written, on the bill. If a place be stated, it will be presumed that the drawer resides there, and if only a general description be given, as "Toronto" or "Halifax," it is sufficient in law, in the absence of information as to the particular street, etc., in which the drawer resides, to give him notice of dishonour by letter addressed to him merely "Toronto," or "Halifax."

A *date* is not an absolute essential to a valid bill, although the bill be payable after date. If the date be omitted, or an impossible date given, the date is fixed by the actual time of drawing or issuing the instrument.

The amount of the bill is usually superscribed in figures. This is, of course, unnecessary, but it is usual. If contradictory to the written words of the

bill, the latter would govern; but it might be found useful, where not contradictory, in supplying the word "dollars," if the latter should, by oversight, be omitted from the body of the bill.

If no time is stated on the bill for payment of the amount, the bill is payable at once, or on demand. If the time for payment be fixed, it is not material that the day is ever so distant.

But it is a rule that a bill or note is void, even between the original parties thereto, if the payment of the money is made, by the terms of the instrument on the face of it, or by a *written* contemporaneous endorsement on the instrument, dependent upon a *condition*, or upon the *contingency* of the happening of an event which may never occur; and the defect is not cured by the fulfilment of the condition or the occurrence of the event.

Thus, if an instrument be drawn or made for the payment of a sum of money (being the price of certain goods), "*upon condition* that if any dispute should arise between, etc., respecting the goods, the note should be void"; or "*provided* the terms mentioned in certain letters shall be complied with"; or "*provided* T. S. shall not pay"; or "*provided* D. M. shall not return to Canada, or his death be duly certified, before the appointed time for payment"; or "when I am able"; or "when J. S. shall marry"; or "when an estate, etc., shall be sold"; it is not valid as a bill or note.

An instrument is not valid as a bill or note if the sum specified is not payable at all events, but is expressed to be security merely as a set-off against, or deduction from, another demand.

And the instrument is considered uncertain, contin-

gent, and void as a bill or note, if the money is to be paid out of a specified *fund*, which may never be realized or be adequate to the purpose; as, "out of rents;" or "out of money when received;" or "out of my growing subsistence;" or "out of the produce of goods when sold;" or "out of drafts on a banker;" or "when they shall be paid."

But, however uncertain it may be *when* the event on which the time for payment is made dependent will occur, if it be certain that it *must* transpire at some period, the bill or note will be good; as, if the payment is to be made within one month "after the *death*" of a party; or "when J. S. shall come *of age*" (naming the day); so that his death would not discharge the liability.

The bill may be made payable to the drawer, or to a third person. It is not essential that either should be named, provided the bill be made payable to the order of the drawer (when in effect it is payable to him), or to bearer.

But alternative words on the face of the instrument, as to the party to whom payment is to be made, will invalidate the bill; as, if it be payable to A. *or* B.

If, on framing a bill, a blank or space be left for the name of the payee, the acceptor and drawer tacitly authorize a *bona fide* holder, afterwards taking the bill from the drawer or his transferee, to supply his own name, so as to give effect to the instrument as a bill payable to himself; and the objection of uncertainty, which would otherwise prevail, is thus obviated.

If the name of a *fictitious* person be introduced as *payee*, the bill is inoperative in the hands of a part who takes it with knowledge of that fact; but the

parties to the bill who were aware of the circumstance shall not be permitted to avail themselves of the irregularity; and against them the bill, in the hands of an innocent holder for value, may be treated as a bill payable to *bearer*.

If the bill be *drawn* in the name of a fictitious person, payable to the order of the drawer, with the acceptor's knowledge, the latter may be charged by a *bona fide* holder as undertaking to pay to the order of the person who signed as the drawer.

Although the bill be *accepted* payable at a particular place in pursuance of the drawer's request, yet if the acceptor do not use the restrictive words "and not otherwise or elsewhere," the acceptance is, as to him, deemed to be *general*; and the acceptor is responsible, although no presentment be made at the specified place.

The words "value received" (though usual) are not necessary to give validity or force to the instrument as a bill of exchange.

The formal signature of the drawer at the foot of the bill is not essential. If the drawer himself write the bill in this shape, "*I, A. B., request you to pay,*" etc., the instrument will be good, although not undersigned.

The signature may be in pencil; or by a mark or cross, by way of signature.

When an agent draws a bill for his principal, the signature should be in the name of the latter; or in the name of the agent, thus: "*A. B. (the agent) for C. D. (the principal);*" or thus: "*C. D. (the principal), per procuration, A. B. (the agent).*" If an agent merely sign his own name only, as drawer, he will



become personally liable on the bill, and the principal will not incur any responsibility thereon.

If there be several drawers, and they be *partners*, either the name of the firm may be subscribed by one of the members or an agent of the firm, or the signature may be by the partner or agent "for" the firm by its usual title.

If the drawers be *not partners*, each should separately sign by himself or by an agent appointed by him for the purpose. In this case one drawer has no *implied* authority to sign for the others.

The acceptance may be upon any part of the bill, and it may be effected by the drawer merely writing his name with the word "accepted;" or, it seems, by his merely writing thereon "presented," or the day of the month, or a direction to a third person to pay the amount.

An acceptance may be in pencil, or by making a mark in lieu of a signature with intent to accept.

A *CHEQUE* is a written order, addressed to a bank, or private bankers, made upon them by a person having money in their hands, directing them to pay upon presentment to the person named therein, or to his order, or to bearer, a specified sum of money. It is transferable, like a bill or note, by endorsement or delivery.

A cheque is not entitled to days of grace; it may be taken any time after its date, and the holder still not be subject to equities, as set off and the like, existing between the drawer and the party from whom the holder receives it; and no delay on the part of the holder in demanding payment of the bank excuses the drawer from such payment, unless he has suffered

some loss or injury by reason of unusual or protracted delay, and then only to the extent of such loss.

Where a bank refuses to pay a customer's cheque, when drawn to an amount not exceeding the amount of the customer's deposit with the bank, it is liable to the customer in damages. But it is not bound to pay at all unless it has funds to the full amount of the cheque. The death of the drawer revokes the bank's authority to pay an outstanding cheque, but a payment in ignorance of the death would be valid. If the sum for which the cheque is drawn be fraudulently altered and increased, the cheque is void, and should the bank pay such increased sum, it must itself bear the loss, unless the drawer's careless method of writing the cheque itself invited the forgery. The bank also loses should it pay a cheque of which the maker's or endorser's signature is forged.

A cheque should be presented for payment within a reasonable time. Such reasonable time is generally considered the first, or, at furthest, second day after receipt. Should such presentment be neglected, and the bank in the meantime fail, the holder would bear the loss, provided that funds of the drawer sufficient to meet the cheque were in the hands of the bank at and shortly after its issue.

AN "I. O. U." is a simple acknowledgment of a debt, in writing. It is not assignable by mere endorsement.

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#### FORMS.

##### *Negotiable note.*

\$100.

OTTAWA, 1st May, 1886.

Three months after date, I promise to pay John Scarlett, or order, at the Bank of Montreal, Toronto, the sum of one hundred dollars, value received.

THOMAS ATKINS.

*Note not negotiable.*

\$2,000.

CHATHAM, N. B., 15th March, 1886.

Sixty days after date I promise to pay Samuel Harrison two thousand dollars, value received.

HENRY TURNER.

*Joint note.*

\$350.

ANNAPOLIS, N. S., 10th Jan., 1886.

Six months after date we jointly, but not severally, promise to pay Samuel Richards, or order, three hundred and fifty dollars.

H. THORNE.

THOMAS BARFOOT.

*Joint and several note.*

\$580.

LONDON, Ont., 4th July, 1885.

Thirty days after date we jointly and severally promise to pay to the order of Nathan Quigley five hundred and eighty dollars.

CHARLES WOOD.

IRWIN SECORD.

*Note on demand.*

\$150.

WINNIPEG, Man., 17th Oct., 1885.

On demand I promise to pay Edward Chase, or order, one hundred and fifty dollars, value received.

T. SILVESTER.

*Bill of exchange.*

\$1,700.

VICTORIA, B. C., 12th December, 1885.

Three days after sight, pay to the order of Henry Silverthorne seventeen hundred dollars, value received, and charge to the account of

CABLE, CONGREVE &amp; CO.

To Messrs. Johnson &amp; Smart, Toronto.

*Cheque.*

To the

TORONTO, 27th May, 1886.

Imperial Bank of Canada: pay to Smith & Sellry, or order, [\$78.40] seventy-eight dollars forty cents.

JOHN EASTON &amp; CO.

*Protest of promissory note for non-payment.**(The protested note is attached.)*

On this tenth day of July, in the year of our Lord one thousand eight hundred and eighty-six, at the request of the Manufacturers'

Bank, the holders of the promissory note hereunto annexed, I, Campbell Stuart, a Notary Public for Ontario, by Royal authority duly appointed, did exhibit the said promissory note unto James Barr, at the city of Kingston, Ont., at the office of the said James Barr, being the place where the same is payable, and speaking to him did demand payment of the said promissory note, to which demand he answered "No funds."

Wherefore, I, the said Notary, at the request aforesaid, have protested, and do hereby solemnly protest, as well against all the parties to the said promissory note as against all other persons whom it may concern, for all interest, damages, costs, charges, expenses and other losses suffered or to be suffered for want of payment of the said promissory note.

And afterwards on the day and year mentioned in the margin, I, the said Notary Public, did serve due notice according to law of the said presentment, non-payment and protest of the said promissory note upon the several parties thereto by depositing in Her Majesty's post office at Kingston, Ont., being the nearest post office to the place of the said presentment, letters containing such notices, one of which letters was addressed to each of the said parties severally, the superscription and address of which letters are respectively copied below, as follows, that is to say.

JAMES BARR, Kingston, Ont.

MARTIN GRAHAM, Kingston, Ont.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year first above written.

C. STUART, Notary Public.

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*Notice to endorsee of above.*

10th day of July, 1886.

To Martin Graham, Kingston, Ont.:

Take notice that a promissory note dated on the 7th day of April, 1886, for the sum of \$7,000, made by James Barr, payable three months after date thereof at the office of James Barr, and endorsed by yourself, was this day presented by me for payment at the said office, and that payment thereof was refused, and that the Manufacturers' Bank, the holders of the said note, look to you for payment thereof. And also take notice, that the same was this day protested by me for non-payment.

Your obedient servant,

C. STUART, Notary Public.

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*Bond of indemnity upon paying a lost note.*

KNOW ALL MEN BY THESE PRESENTS, that I, James Edwards, of Windsor, in the County of Essex, and Province of Ontario, farmer, am held and firmly bound unto Simpson Talbot, of the same place, Insurance Agent, in the penal sum of one thousand dollars, lawful money of Canada, to be paid to the said Simpson Talbot, or his certain attorney, executors, administrators or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with my seal and dated this fourth day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above named Simpson Talbot, by his promissory note signed by him, and dated the first day of May, in the year one thousand eight hundred and eighty-four, did promise to pay unto one John Mann, or order, five hundred dollars, three months after the date thereof, and such note was afterward endorsed by the said John Mann, and transferred to and became the property of the said James Edwards, as the said Edwards alleges; and whereas the said Edwards further alleges that he held the said note in his possession for the space of some weeks, but afterwards mislaid or lost the same, and the same is now lost; and whereas the said Simpson Talbot has, on the day of the date hereof, at the request of the said James Edwards, and upon his, the said Edwards promising to indemnify the said Talbot, and deliver up the said note to be cancelled when found, paid the said Edwards the said sum of five hundred dollars, in full satisfaction and discharge of the said note, the receipt whereof the said Edwards doth hereby acknowledge; now the condition of the above written bond or obligation is such, that if the said Edwards, his heirs, executors, or administrators, or any of them, do and shall, from time to time, and at all times hereafter save, defend, keep harmless, and indemnify the said Simpson Talbot, his executors and administrators, and his and their goods, chattels, lands, and tenements of, from, and against the said note of five hundred dollars, and of and from all costs, charges, loss, damages, and expenses, that shall or may happen or arise therefrom, and also deliver or cause to be delivered up the said note, when and so soon as the same shall be found, to be cancelled, then this obligation to be void; otherwise to remain in full force and virtue.

JAMES EDWARDS. [L.s.]

Signed, sealed and delivered }  
in presence of  
SIMCOE ROBINSON.

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## BONDS.

A BOND is a deed (invariably under seal) whereby the maker, or *obligor*, as he is called, obliges himself, his heirs, executors, and administrators, to pay, as a penalty, a specified sum of money to another person called the *obligee*. Some bonds contain no more than the obligation, and, where so drawn, they are known as single bonds. As a rule, however, a condition is added to the effect that if the obligor performs some particular act or duty, therein specified, the obligation shall be void; otherwise that it shall remain in full force and virtue.

The penalty in a bond is usually made double the amount of the true debt, if a liability in money is to be secured; where the bond is given to secure the performance of some agreement or duty, a sum, reasonable under the circumstances, is fixed as the penalty. The amount is immaterial so long as it is sufficient, for in an action on the bond, only the actual indebtedness (with interest and costs) secured, if of money or money's worth, or reasonable damages, if to secure the performance of an act, can be recovered.

The parties to a bond may agree beforehand that the act covenanted to be performed or abstained from, will result to the obligee in damages to a certain stipulated or liquidated amount, and fix the amount of the bond at the sum agreed upon and so specifically mentioned; and if this sum appears reasonable, it will determine the amount of the liability. But the inclination of Courts of law is to permit only the true and actual amount of the damage or loss to be recovered, and the

fact of the clear agreement of the parties that the amount mentioned is stipulated damages, and not in the way of a penalty, must be proved in case the bond is disputed at law.

Where the obligation of a bond is possible at the time of making it, but afterwards becomes impossible of performance by the act of God, the penalty is saved.

Bonds given as securities to a firm, are not valid after any change in the partnership.

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FORMS.

*Single Bond without condition.*

Know all men by these presents, that I, A. B., of, &c., am held and firmly bound unto C. D., of, &c., in the penal sum of \$1,000 of lawful money of Canada, to be paid to the said C. D. or to his certain attorney, executors, administrators or assigns; for which payment to be well and faithfully made, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated the 6th day of July, 1886.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]

---

*Bond with condition.*

Know all men by these presents, that I, A. B., of, &c., am held and firmly bound unto C. D., of, &c., in the penal sum of \$1,000 of lawful money of Canada, to be paid to the said C. D. or to his certain attorney, executors, administrators or assigns: for which payment well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents.

Sealed with my seal, dated this 6th day of July, 1886.

The condition of the above written bond or obligation is such that if the above bounden A. B., his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said C. D., his executors, administrators or assigns, the just and full sum of \$500 of lawful money of Canada, with interest thereon at the rate of ten per cent. per annum, on the days and times, and

in the manner following, that is to say: The said principal sum of \$500 on the 6th day of January, 1887, and the said interest half yearly, on the 6th days of January and July in each year, (the first of such payments of interest on the 6th day of January next) without any deduction, defalcation or abatement whatsoever: Then the above written bond or obligation shall be void and of no effect; otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.S.]

---

*Bond to convey Land.*

Know all men by these presents, that I, A. B., of, &c., am held and firmly bound unto C. D., of, &c., in the penal sum of \$1,000 of lawful money of Canada, to be paid to the said C. D., or to his certain attorney, executors, administrators or assigns: for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them forever, firmly by these presents.

Sealed with my seal, dated this 1st day of May, 1886.

Whereas, the said C. D. hath contracted with the above bounden A. B., for the absolute purchase in fee simple, free from incumbrances, of the following lands and premises, that is to say: (*here describe the lands to be conveyed.*) And whereas, the said C. D. hath agreed to pay therefor, the sum of \$500 of lawful money of Canada, at the times, and in manner following, that is to say: (*here state the mode of payment.*)

Now the condition of the above obligation is such that if the said C. D., his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, to the above bounden A. B., his executors, administrators or assigns, the sum of \$500 at the time and in manner aforesaid; and if the above bounden A. B., his heirs or assigns, shall then by good and sufficient deed or deeds of conveyance in fee simple, convey and assure, or cause to be conveyed and assured, unto the said C. D., his heirs and assigns for ever, the said premises hereinbefore described, free from all incumbrances; then the above obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.S.]

---

*Bond for payment of Purchase Money.*

Know all men by these presents, that I, C. D., of, &c., am held and firmly bound unto A. B., of, &c., in the penal sum of \$1,000 of lawful money of Canada, to be paid to the said A. B., or to his cer-



tain attorney, executors, administrators or assigns: for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them firmly by these presents.

Sealed with my seal, dated this      day of      18      .

Whereas, the above bounden C. D., hath contracted with the said A. B., for the absolute purchase in fee simple, free from all incumbrances, of the following lands and premises; that is to say: (*here describe the lands.*)

And whereas, the above bounden C. D. hath agreed to pay therefor the sum of \$500 of lawful money of Canada, at the time and in manner following; that is to say: (*here state the mode of payment.*)

And whereas, upon the treaty for the said purchase, it was agreed that the above bounden C. D. should enter into the above bond or obligation for payment of the said purchase money, or the unpaid part thereof, and interest in manner aforesaid; and be let into possession of the said lands and premises and receipt of the rents and profits thereof, from the day of the date hereof.

Now the condition of the above written obligation is such that if the above bounden C. D., his heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid to the said A. B., his executors, administrators or assigns, the whole of the said purchase money and interest thereon as aforesaid at the times and in manner aforesaid, without making any deduction, defalcation or abatement thereout on any account whatsoever; Then the above obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of  
Y. Z.

C. D. [L.s.]

---

#### *Bond of Indemnity.*

Know all men by these presents, That I, E. F., of, &c., am held and firmly bound unto G. H., of, &c., in the penal sum of \$5,000 of lawful money of Canada, to be paid to the said G. H., or to his certain attorney, executors, administrators or assigns: For which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every of them, firmly by these presents.

Sealed with my seal, dated this      day of      18      .

The condition of the above written bond or obligation is such that if the above bounden obligor, his heirs, executors and administrators, do and shall from time to time, and at all times hereafter, hold and keep harmless and fully indemnified the said obligee, his heirs, executors and administrators, and his and their lands and tenements, goods, chattels and effects, of, from and against all loss, costs, charges, damages and expenses which the said obligee, his heirs, executors or administrators, may at any time hereafter bear, sustain, be at, or be put to, for, or by reason, or on account of, (*here state*

*the particular matters to which the indemnity is to apply*) or any thing in any manner relating thereto; Then the above written bond or obligation shall be void: otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered  
in the presence of  
Y. Z.

E. F. [L.S.]

*Bond from a Lessee and his Surety to pay rent according to Lease.*

Know all men by these presents, That we, C. D., of, &c., and E. F., of, &c., are held and firmly bound unto A. B., of, &c., in the penal sum of \$1,000 of lawful money of Canada, to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns: for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated this       day of       18       .

Whereas, the above named A. B. by Indenture of Lease bearing even date with, but executed before, the above written obligation, for the consideration in the said lease mentioned, hath demised to the above bounden C. D., a certain saw mill situate at &c., (*here describe the premises*) To hold unto the said C. D., his executors, administrators and assigns, for the term of       years from thence next ensuing (determinable nevertheless at the end of the first years of the said term, if the said C. D., his executors, administrators or assigns, shall give       months notice thereof, in manner therein mentioned) at and under the yearly rent of \$500 payable quarterly in manner as therein expressed: as by the said lease will more fully appear.

Now the condition of the above written obligation is such, that if the above bounden C. D. and E. F., or either of them, their, or either of their heirs, executors or administrators, shall and do during the continuance of the said recited lease, well and truly pay or cause to be paid, the said yearly rent or sum of \$500, unto him the said A. B., his heirs or assigns, by four equal quarterly payments of \$125 each, on the several days following, that is to say, the       day of       , the       day of       , the       day of       , the       day of       , in each and every year during the said demise, or within fourteen days next after any of the said days or times of payment, according to the true intent and meaning of the said recited lease, (the first quarterly payment to be made on the       day of       next); Then the above written obligation shall be void and of no effect: otherwise shall remain in full force and virtue.

Signed, sealed and delivered  
in the presence of  
Y. Z.

C. D. [L.S.]  
E. F. [L.S.]

## CHATTEL MORTGAGES AND BILLS OF SALE.

CHATTEL MORTGAGES are conveyances, by way of security, of personal property of a moveable kind, such as household furniture, farming implements, cattle, stock in trade, etc. They are special written contracts, entered into between two or more parties, for the conditional sale or transfer of the chattels therein mentioned, to ensure the repayment of money loaned, or any debt, or to secure the mortgagee against a liability, such as the endorsement of a promissory note. The mortgagor's property and title to the chattels is sold, assigned and transferred to the mortgagee, subject to the transfer or reconveyance thereof upon repayment of the money loaned, etc., at the time, and in the manner specifically set forth. If the mortgagor so repays, or otherwise performs his contract, the mortgage becomes void, and may be discharged by a proper written discharge, and the title to the goods reverts in him. While his contract remains unbroken, it is usually stipulated that the goods, etc., are to remain in his possession, and he is to have the use of them.

The object of the statutory enactments hereinafter mentioned with reference to the registration of chattel mortgages, is to enable creditors of the mortgagor, and others about to become creditors, to obtain prompt notice of the transfer of his title in effects of which he remains apparently owner. In the absence of such enactments it might lay in the power of a debtor, if fraudulently disposed, to deprive confiding creditors of the fruits of an execution against him. Purchasers in good faith might also be defrauded.

So strongly is the law opposed to such fraudulent practices, that it may be generally stated that any chattel mortgage not given and taken in perfect good faith, and for good and equitable consideration, will be null and void, and may be set aside in a Court of Justice by creditors or purchasers whose rights are infringed. Even if valuable consideration be given, yet if there exist collusion between the parties, or other fraud, the mortgage cannot be upheld in law as against creditors of the mortgagor or subsequent purchasers, in good faith, of the chattels. But a mortgage void as against such is sometimes good between the parties.

In preparing a chattel mortgage great care and considerable skill are requisite, as well as close attention to the requirements of the local statutes governing the transaction. Should these requirements not be fulfilled, even although the defects appear at first sight trivial, the instrument may be found worthless for the purpose for which it was intended. This extends to matters subsequent to the first preparation and registry of the instrument, such as its renewal within the periods prescribed by the statute, and other duties imposed upon the parties by law. The express provisions of the instrument itself must also be carefully conformed to, as they embrace the specific terms of the contract. These usually give the mortgagee the right, among others, to enter upon the premises of the mortgagor and take possession of the chattels, so soon as any default is made in payment, and to sell them. Such possession is usually taken by the mortgagee's bailiff acting under written warrant signed by the mortgagee, though there is nothing to prevent the mortgagee from taking personal possession himself.

If a sale takes place, the strict terms of the contract as to the mode of sale, and the disposal of the amount realized must be observed. A mortgagee improperly seizing or selling may render himself liable to the mortgagor in damages for trespass.

Upon seizure, the mortgagee becomes absolute owner of the chattels, though a Court of Equity will, in some instances, allow the mortgagor to redeem, upon just terms.

It is hardly necessary to state that no bar of dower is required in a chattel mortgage. In practice it will be found well to recite, or state shortly in the body of the mortgage, the object for which the instrument is given, and the true and actual nature of the consideration. This is in some cases absolutely necessary, and is in all useful. It is too often overlooked by conveyancers. The chattels conveyed should also be fully and accurately described, so that no mistake is possible. After payment of the mortgage it should be properly discharged.

The forms which follow have been carefully prepared, and from them and the statutes appended may be learnt the principal requirements of the law in this particular in the various Provinces.

#### BILLS OF SALE.

A Bill of Sale is a conveyance in writing, generally under seal, whereby one person conveys the right, title or interest he has in goods or chattels, to another.

Where chattels are of small value or are of such a nature as to be easily transferred from hand to hand, or to admit of an actual, immediate and evident change of ownership, a bill of sale is generally unnecessary.

But where the chattels remain situate as before, and the change of ownership or possession is not readily apparent, a bill of sale should be demanded, to remove all doubts and protect them against seizure by the creditors of the seller. A bill of sale executed in fraud of creditors is always void. Further requisites of bills of sale will be learnt upon perusal of the following statutes and forms.

For the provisions as to the execution and registration of chattel mortgages and bills of sale in Nova Scotia, reference must be had to cap. 92 of the Revised Statutes of that Province.

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ONTARIO.

Following is the full text of the Act respecting Mortgages and Sales of Personal Property, R. S. O. cap. 119, all amendments to date being incorporated.

REGISTRATION OF CHATTEL MORTGAGES, AND SALES OF GOODS  
WHERE POSSESSION IS UNCHANGED.

1. Every mortgage, or conveyance intended to operate as a mortgage of goods and chattels, made in Ontario, which is not accompanied by an immediate delivery, and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall, within five days from the execution thereof, be registered as hereinafter provided, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or of one of several mortgagees, or of the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith and is properly authorized in writing to take such mortgage (in which case a copy of such authority shall be registered therewith). C. S. U. C. c. 45, s. 1; 40 V. c. 7, *Sched. A* (134).

2. Such last mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the

mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. C. S. U. C. c. 45, s. 2.

3. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. 26 V. c. 46, s. 1.

4. In case such mortgage or conveyance and affidavits are not registered as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration. C. S. U. C. c. 45, s. 3.

5. Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee, or his agent duly authorized in writing to take such conveyance (a copy of which authority shall be attached to such conveyance), that the sale is *bona fide* and for good consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and such conveyance and affidavits shall be registered as hereinafter provided, within five days from the executing thereof, otherwise the sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. C. S. U. C. c. 45, s. 4.

6. In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the endorsement of any bills or promissory notes or any other liability by him incurred for the mortgagor, not extending for a longer period than one year from the date of such mortgage, and in case the mortgage is executed in good faith, and sets forth fully by recital or otherwise, the terms, nature and effect of the agreement, and the amount of liability intended to be created, and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the

mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith and for the express purpose of securing the mortgagee repayment of his advances or against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage is registered as hereinafter provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Act. C. S. U. C. c. 45, s. 5.

The affidavit of *bona fides* required by the two preceding sections may be made by one of two or more bargainees or mortgagees; and no sale or mortgage heretofore made shall be invalidated by reason of such affidavit being made by one only of such bargainees or mortgagees.

7. The instruments mentioned in the preceding sections shall be registered in the office of the Clerk of the County Court of the County or Union of Counties where the property so mortgaged or sold is at the time of the execution of such instrument; and such Clerks shall file all such instruments presented to them respectively for that purpose, and shall endorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein, or intending or desiring to acquire any interest in all or any portion of the property covered thereby. C. S. U. C. c. 45, s. 7.

8. The said Clerks respectively shall number every such instrument or copy filed in their offices, and shall enter in alphabetical order in books to be provided by them, the names of all the parties to such instruments, with the numbers endorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. C. S. U. C. c. 45, s. 8.

9. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the County or Union of Counties in which they were at the time of the execution of the mortgage to another County or Union of Counties before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the Clerk of the County Court in whose office it was



first registered, and under the seal of the said Court, and of the affidavits and documents and instruments relating thereto filed in such office, shall be filed with the Clerk of the County Court of the County or Union of Counties to which such goods and chattels are removed within two months from such removal; otherwise the said goods and chattels shall be liable to seizure and sale under execution and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees in good faith for valuable consideration, as if never executed. C. S. U. C. c. 45, s. 9; 40 V. c. 8, s. 29.

#### RENEWAL OF MORTGAGES.

10. Every mortgage, or copy thereof, filed in pursuance of this Act, shall cease to be valid, as against the creditors of the persons making the same, and against subsequent purchasers and mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a statement exhibiting the interest of the mortgagee, his executors, administrators or other assigns, in the property claimed by virtue thereof, and shewing the amount still due for principal and interest thereon, and shewing all payments made on account thereof is again filed in the office of the clerk of the County Court of the County or Union of Counties wherein such goods and chattels are then situate, with an affidavit of the mortgagee, or one of several mortgagees, or of the assignee, or one of several assignees, or of the agent of the mortgagee or assignee, or mortgagees or assignees (as the case may be) duly authorized in writing, for that purpose (a copy of which authority shall be filed therewith), that such statement is true, and that the said mortgage has not been kept on foot for any fraudulent purpose.

The statement and affidavit mentioned in the next preceding paragraph may be in the form given in the schedule to this Act, or to the like effect.

The said statement and affidavit shall be deemed one instrument and be filed and entered as in section 8 is required, and the like fees shall be payable.

11. The affidavit required by the tenth section may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any assignee claiming by or through any mortgagee, or any next of kin, executor, or administrator of any such assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee, the assignment or the several assignments through which such assignee claims shall be filed in the office in which the mortgage is filed, at or before the time of such re-filing by such assignee, next of kin, executor or administrator of such assignee. 40 V. c. 21, s. 5.

## EVIDENCE OF REGISTRATION.

**12.** A copy of such original instrument or of a copy thereof, so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose office the same has been filed, under the seal of the Court, shall be received in evidence in all Courts, but only of the fact that such instruments or copy and statement were received and filed according to the endorsement of the Clerk thereon, and of no other fact; and in all cases the original endorsement by the Clerk made in pursuance of this Act, upon any such instrument or copy, shall be received in evidence only of the fact stated in such endorsement. C. S. U. C. c. 45, s. 11.

## DISCHARGE OF MORTGAGES.

**13.** Where any mortgage of goods and chattels is registered under the provisions of this Act, such mortgage may be discharged, by the filing, in the office in which the same is registered, of a certificate signed by the mortgagee, his executors or administrators, in the form given in the Schedule hereto, or to the like effect. 40 V. c. 21, s. 1.

**14.** The officer with whom the chattel mortgage is filed, upon receiving such certificate, duly proved by the affidavit of a subscribing witness, shall, at each place where the number of such mortgage has been entered, with the name of any of the parties thereto, in the book kept under section eight of this Act, or wherever otherwise in the said book the said mortgage has been entered, write the words, "*Discharged by certificate number* (stating the number of the certificate)," and to the said entry such officer shall affix his name, and he shall also endorse the fact of such discharge upon the instrument discharged, and shall affix his name to such endorsement. 40 V. c. 21, s. 2.

**15.** Where a mortgage has been renewed under section 10 of this Act, the endorsement or entries required by the preceding section to be made need only be made upon the statement and affidavit filed on the last renewal, and at the entries of such statement and affidavit in the said book.

An authority for the purpose of taking or renewing a mortgage or conveyance under the provisions of [this Act] may be a general one to take and renew all or any mortgages or conveyances to the mortgagee or bargainee.

**16.** In case any registered chattel mortgage has been assigned, such assignment may, upon proof by the affidavit of a subscribing witness, be numbered and entered in the alphabetical chattel mortgage book, in the same manner as a chattel mortgage, and the

proceedings authorized by the three next preceding sections of this Act may and shall be had, upon a certificate of the assignee, proved in manner aforesaid. 40 V. c. 21, s. 4.

MORTGAGES AND SALES OF CHATTELS IN UNORGANIZED DISTRICTS.

**17.** When the personal property mortgaged or sold is within a Provisional Judicial District, then the provisions of this Act shall apply to such instrument with the substitution of "the Clerk of the District Court" for "the Clerk of the County Court;" and with the substitution of "ten days" for "five days" as the time within which the instrument or a copy thereof shall be registered; but this section shall not apply to any portion of a Territorial District which forms part of a Provisional Judicial District. 40 V. c. 24, s. 14.

**18.** When the personal property mortgaged or sold is within a Territorial District, then the provisions of this Act shall apply to such instrument, with the substitution of "the Clerk of the first Division Court of the District" for the "Clerk of the County Court," and with the substitution of "ten days" for "five days," as the time within which the instrument or a copy thereof shall be registered. 40 V. c. 24, s. 14 (2).

**19.** When the personal property mortgaged or sold is within the said Temporary Judicial District, then the provisions of this Act shall apply to such instrument, with the substitution of "the Clerk of the County Court of the County of Renfrew" for "the Clerk of the County Court," and with the substitution of "twenty days" for "five days," as the time within which the instrument or a copy thereof shall be registered. 40 V. c. 24, s. 14 (3).

**20.** Every instrument executed before the first day of July one thousand eight hundred and seventy-seven, and which, had it been executed after said day, would require registration under the preceding provisions, shall be registered on or before the first day of January, one thousand eight hundred and seventy-eight, in the manner required by the provisions of this Act, and thereafter every such instrument which under the provisions of this Act requires renewal shall, unless duly renewed, become void in accordance with the provisions of this Act. 40 V. c. 24, s. 14 (4).

**21.** Nothing in the four preceding sections shall be used to aid in determining whether or not chapter forty-five of the Consolidated Statutes of Upper Canada was, prior to the first day of July, one thousand eight hundred and seventy-seven, in force in any Territorial, Temporary Judicial, or Provisional Judicial District. 40 V. c. 24, s. 14 (5).

## FEES.

**22.** For services under this Act the Clerks aforesaid shall be entitled to receive the following fees:

1. For filing each instrument and affidavit, and for entering the same in a book as aforesaid, twenty-five cents;

2. For filing assignment of each instrument and for making all proper endorsements in connection therewith, twenty-five cents;

3. For filing certificate of discharge of each instrument and for making all proper entries and endorsements connected therewith, twenty-five cents;

4. For searching for each paper, ten cents; and

5. For copies of any document with certificate prepared, filed under this Act, ten cents for every hundred words. C. S. U. C. c. 45, s. 14; 40 V. c. 21, s. 6.

## MISCELLANEOUS.

**23.** All the instruments mentioned in this Act, whether for the sale or mortgage of goods and chattels, shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. C. S. U. C. c. 45, s. 6.

**24.** All affidavits and affirmations required by this Act shall be taken and administered by any Judge or Commissioner or other person in or out of the Province authorized to take affidavits in and for the Courts of Queen's Bench or Common Pleas, or a Justice of the Peace, and the sum of twenty cents shall be paid for every oath thus administered.

**25.** This Act does not apply to mortgages of vessels registered under the provisions of any Act in that behalf. C. S. U. C. c. 45, s. 15.

## SCHEDULE.

(Section 13.)

## FORM OF DISCHARGE OF MORTGAGE.

*To the Clerk of the County Court of the County of*

I, A. B., of do certify that  
has satisfied all money due on, or to grow due on a certain chattel  
mortgage made by to , which  
mortgage bears date the day of  
A.D. , and was registered (or in case the mortgage has been  
renewed under section ten, was re-registered,) in the office of the

Clerk of the County Court of the County of \_\_\_\_\_, on  
 the \_\_\_\_\_, A.D. \_\_\_\_\_, as No. \_\_\_\_\_, (here mention  
 the day and date of registration of each assignment thereof, and the  
 names of the parties, or mention that such mortgage has not been  
 assigned, as the fact may be); and that I am the person entitled by  
 law to receive the money; and that such mortgage is therefore  
 discharged.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18 \_\_\_\_.

One Witness, stating residence }  
 and occupation. }

A. B.

### SCHEDULE.

(Section 10.)

Statement exhibiting the interest of C. D. in the property men-  
 tioned in a Chattel Mortgage dated the \_\_\_\_\_ day of  
 18\_\_\_\_, made between A. B., of \_\_\_\_\_  
 of the one part, and C. D., of \_\_\_\_\_ of the other part and  
 filed in the office of the Clerk of the County Court of the County  
 of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_  
 and of the amount due for principal and interest thereon, and of  
 all payments made on account thereof.

The said C. D. is still the mortgagee of the said property, and  
 has not assigned the said Mortgage (or the said E. F. is the assignee  
 of the said Mortgage by virtue of an assignment thereof from the  
 said C. D. to him, dated the \_\_\_\_\_ day of  
 18\_\_\_\_, ) (or as the case may be).

No payments have been made on account of the said mortgage  
 (or the following payments, and no other, have been made on  
 account of the said Mortgage :

1880, January 1, Cash received - - \$100 00)

The amount still due for principal and interest on the said Mort-  
 gage is the sum of \_\_\_\_\_ dollars, computed as follows: [here give  
 the computation.]

C. D.

County of \_\_\_\_\_ } I, \_\_\_\_\_ of the  
 To wit: } \_\_\_\_\_ of \_\_\_\_\_ in the County of  
 \_\_\_\_\_ the mortgagee named in the Chattel Mortgage  
 mentioned in the foregoing (or annexed) statement (or assignee of  
 the mortgagee named in the Chattel Mortgage  
 mentioned in the foregoing [or annexed] statement,) (as the case  
 may be), make oath and say:

1. That the foregoing (or annexed) statement is true.

2. That the Chattel Mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at the  
                   of                   in the  
 County of                   this  
                   day of           18 .

#### NEW BRUNSWICK.

In this Province the term " Bill of Sale " has, in some respects, a less extended meaning than in Ontario. It comprises bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, powers of attorney, and authorities or licenses to take possession of any personal chattels as security for any debt ; but does not include assignments for the general benefit of creditors, marriage settlements, transfers of a ship, transfers of goods in the ordinary course of business of any trade or calling, warehouse receipts, etc., etc.

By the Revised Statute of New Brunswick, chapter 75, every bill of sale or chattel mortgage, and every schedule annexed thereto or referred to therein, or a true copy of such bill or schedule, shall be filed with the Registrar of Deeds and Wills, in the County or District wherein the maker resides ; and shall take effect from the time of filing only, as against any subsequent purchasers, assignees, or sheriffs' seizures. If a copy of the instrument is filed, and not the original, than an affidavit of the due execution of the instrument must accompany and be filed with such copy. Provision is also made for the registration of a discharge of chattel mortgage.

## PRINCE EDWARD ISLAND.

The term "Bill of Sale" has the same meaning given it as in New Brunswick. By the Statute 23 Vict. cap. 9, every bill of sale and chattel mortgage, and every schedule and inventory therein, may be filed with the Prothonotary of the Supreme Court at Charlottetown, or the deputy prothonotary of the County in which the grantor resides; if the grantor be a non-resident, the instrument must be filed at Charlottetown. Before such filing the execution of the instrument must be proved on oath before the prothonotary or deputy prothonotary with whom the same is filed, either by one or more of the subscribing witnesses, or by the acknowledgment of the grantor; and such proof must be endorsed on the instrument. The oath may be taken before the prothonotary, or deputy prothonotary, or before a commissioner of the Supreme Court, and they must certify the same in the forms given in the Act. Registered instruments take priority from the date of filing; but, as between the immediate parties to them and as against the grantor, they are good without filing.

An important change in the law was effected by the statute 41 Vict. cap. 7, whereby it is enacted that all absolute bills of sale shall be fraudulent and void, except as between grantor and grantee, unless the grantee shall, forthwith upon the execution thereof, take actual possession of the goods and chattels comprised therein, and the grantor shall cease to have the possession thereof.

A chattel mortgage shall be presumed to be valid, although such possession is not taken, if registered according to 23 Vict. cap. 9; and if the grantee, or his

agent, or one of several grantees, or the agent of all or any of them make the affidavit in schedule A (hereunder given); which affidavit shall be endorsed upon, or annexed to, such chattel mortgage.

The affidavit called for by this Act may be made before any Commissioner of the Supreme Court, or County Court, or before the Prothonotary of the Supreme Court, or the deputy prothonotary of the County in which such mortgage was required to be filed, or before any clerk or assistant clerk of the County Court.

Sheriffs, Sheriffs' Bailiffs, Constables, and all persons authorized to levy under any execution from any Court, may levy upon and sell any chattels mentioned in a chattel mortgage, provided that the amounts secured by all registered chattel mortgages thereon, and interest as expressed therein, up to the day of payment, be duly paid.

#### SCHEDULE—FORM A.

Dominion of Canada ; } I,                      of                      in  
Province of Prince Edward Island: } County, (*farmer,*  
County. } *as the case may be*), the grantee  
[for one of the grantees] mentioned in the within Chattel Mortgage,  
(or I, of                      in                      County, agent for the grantee or one  
of the said grantees), make oath and say ; that                      the grantor  
named in said Chattel Mortgage is really and truly indebted to me  
(or to the grantee or grantees therein named), in the sum of \$  
                    for (*here state consideration*), and I further say  
that the said Chattel Mortgage was really and truly given and  
accepted for the consideration therein expressed, and that to the  
best of my knowledge and belief the said mortgage was not executed  
for the purpose or with the intent of protecting the property therein  
described from the creditors of the said grantor, or of defrauding  
the creditors of the said grantor or any of them.

Sworn at  
in                      County, }  
this                      day of                      }  
before me )

A. B.



## MANITOBA.

Under statutory provisions similar to those in the Ontario Statute, chattel mortgages and bills of sale may be filed in the office of the County Clerk in the County where the goods are situate. The filing of the former is permissive, but that of the latter is necessary to protect the chattels against creditors and subsequent purchasers. No specified time is given within which these instruments must be filed, but they take effect only from the filing.

Mortgages cease to be valid as against subsequent purchasers or mortgagees in good faith, or creditors, unless renewed within two years from their filing.

The costs of seizure under a chattel mortgage are fixed by statute, and are given hereafter.

Receipt notes, hire receipts, and orders for chattels given by bailees of chattels, where the condition of bailment is such that the possession, but not the ownership, passes, are governed by the same law as chattel mortgages. They must also be registered within sixty days from their date with the Clerk of the County wherein the maker is resident. Their discharge may be registered.

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BRITISH COLUMBIA.

By the "Bills of Sales Ordinance, 1870," registration must be made within twenty-one days after execution of the instrument, and re-registration, or renewal, after five years, upon the filing of an affidavit stating the material facts. Upon payment of a chattel mortgage and proof thereof before the Registrar-General or a Stipendiary Magistrate, satisfaction is entered upon the instrument.

## FORMS.

*Chattel Mortgage.*

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, Between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Witnesseth that the said party of the first part, for and in consideration of the sum of \$100 of lawful money of Canada, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth bargain, sell and assign unto the said party of the second part, his executors, administrators and assigns, all and every the goods, chattels, furniture and effects in and about the dwelling house (or store) of the said A. B., situate at, &c., and hereinafter particularly mentioned, that is to say (*Here specify the chattels: or you may refer to a schedule, saying after the word, &c., "which are particularly specified in the schedule hereunder written."*)

To have, receive and take the said goods and chattels hereby assigned or intended so to be, unto the said party of the second part, his executors, administrators and assigns, as his and their own proper goods and effects.

Provided always that if the said party of the first part, his executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the full sum of \$100 with interest thereon, at the rate of 10 per cent. on the \_\_\_\_\_ day of \_\_\_\_\_ next, then these presents shall be void.

And the said party of the first part doth hereby, for himself, his executors and administrators, covenant, promise, and agree to and with the said party of the second part, his executors, administrators, and assigns, that he, the said party of the first part, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators and assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, on the days and times and in the manner above limited for the payment thereof.

And also, that in case default shall be made in the payment of the said sum of money in the said proviso mentioned, or the interest thereon, or any part thereof, or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels, or any of them, or to remove the same or any part thereof out of the County of \_\_\_\_\_ without the consent of the said party of the second part, his executors, administrators or assigns, to such sale, removal or disposal thereof, first had and obtained in writing; then and in such case it shall and may be lawful for the said party of the second part, his

executors, administrators and assigns, peaceably and quietly to receive and take unto his or their absolute possession, and thenceforth to hold and enjoy all and every or any of the goods, chattels and premises hereby assigned or intended so to be, and with his or their servant or servants, and with such other assistant or assistants as he may require, at any time during the day to enter into and upon any lands, tenements, houses and premises belonging to and in the occupation of the party of the first part, where the said goods and chattels or any part thereof may be, and to break and force open any door, lock, bolt, fastening, hinge, gate, fence, house, building, enclosure and place, for the purpose of taking possession of and removing the said goods and chattels; and to sell the said goods and chattels, or any of them, or any part thereof at public auction or private sale, as to them or any of them may seem meet; and from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums of money as may then be due, by virtue of these presents and all such expenses as may have been incurred by the said party of the second part, his executors, administrators or assigns, in consequence of the default, neglect or failure of the said party of the first part, his executors, administrators or assigns, in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators and assigns, all such surplus as may remain after such sale, and after payment of all such sum and sums of money and interest thereon as may be due by virtue of these presents at the time of such seizure, and after payment of the costs, charges, and expenses incurred by such seizure and sale as aforesaid.

And the said party of the first part doth hereby further covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, then he, the said party of the first part, his executors or administrators, will forthwith pay any deficiency to the said party of the second part, his executors, administrators and assigns.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered }  
in the presence of

Y. Z.

A. B. [L.s.]

*Affidavit of Mortgages.*

Ontario, County of } I, C. D., of the of , in the  
 To wit ; } County of the mortgagee in the  
 within bill of sale by way of mortgage named make oath and say,  
 that A. B., the mortgagor in the within bill of sale by way of mort-  
 gage named, is justly and truly indebted to me, this deponent, C.D.,  
 the mortgagee therein named, in the sum of \$100, mentioned  
 therein. That the said bill of sale by way of mortgage was executed  
 in good faith, and for the express purpose of securing the payment  
 of the money so justly due as aforesaid, and not for the purpose of  
 protecting the goods and chattels mentioned in the said bill of sale  
 by way of mortgage against the creditors of the said A.B., the mort-  
 gagor therein named, or preventing the creditors of such mortgagor  
 from obtaining payment of any claim against him.

Sworn before me, at  
 the of , in the  
 County of , this  
 day of , 18 .  
 E. F.

C. D

J. P., or a Commissioner for taking Affidavits for the County of

*Affidavit of Witness.*

Ontario, County of } I, Y. Z., of the of , in the County  
 To wit : } of make oath and say, that I was  
 personally present, and did see the annexed bill of sale, by way of  
 mortgage, duly signed, sealed and delivered by A.B., party thereto,  
 and that the name Y. Z., set and subscribed as a witness to the  
 execution thereof, is of the proper handwriting of me, this deponent,  
 and that the same was executed at , in the said County  
 of

Sworn before me, at  
 the of , in the  
 County of , this  
 day of , 18 .  
 E. F.

Y. Z.

J. P., or a Commissioner for taking Affidavits in and for the  
 County of

*Chattel Mortgage.**(By way of security against Indorsement.)*

This Indenture, made the                    day of                    18    , Between A. B., of, &c., of the first part, and C. D., of, &c., of the second part: Whereas the said party of the second part has indorsed the Promissory Note of the said party of the first part for the sum of \$500, of lawful money of Canada, for the accommodation of the said party of the first part, which Promissory Note is in the words and figures following, that is to say: (*here copy the note.*) And whereas the said party of the first part has agreed to enter into these presents for the purpose of indemnifying and saving harmless the said party of the second part and from the payment of the said promissory note, or any part thereof, or any note or notes hereafter to be indorsed by the said party of the second part, for the accommodation of the said party of the first part, by way of renewal of the said recited note, or otherwise howsoever, within the period of one year from the date hereof.

Now this Indenture witnesseth, that the said party of the first part, in consideration of the premises, hath bargained, sold and assigned, and by these presents doth bargain, sell and assign, unto the said party of the second part, his executors, administrators and assigns, All and singular the goods, chattels, furniture and household stuff hereinafter particularly mentioned and expressed, that is to say: (*describe as in preceding form*).

To have, hold, receive and take the said goods, chattels, furniture and household stuff hereby assigned or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators and assigns, forever: Provided always, and these presents are upon this condition, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, the said promissory note so as aforesaid indorsed by the said party of the second part, and all and every other note or notes, which may hereafter be indorsed by the said party of the second part for the accommodation of the said party of the first part, by way of renewal of the said note, and indemnify and save harmless the said party of the second part, his heirs, executors and administrators, from all loss, costs, charges, damages or expenses in respect of the said note or any renewals thereof, then these presents, and every matter and thing herein contained, shall cease, determine and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in anywise notwithstanding. And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors or

ad ministrators, or some or one of them, shall and will well and truly pay, or cause to be paid, the said promissory note in the above recital and proviso mentioned, and all future or other promissory notes which the said party of the second part shall hereafter indorse for the accommodation of the said party of the first part by way of renewal as aforesaid, and indemnify and save harmless the said party of the second part from all loss, costs, charges, damages or expenses in respect thereof.

And also, that in case default shall be made in the payment of the said promissory note or any renewal note or notes as in the said proviso mentioned, or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of the said goods and chattels, or any of them, or remove the same or any part thereof out of the county of \_\_\_\_\_, without the consent of the said party of the second part, his executors or administrators, to such sale, removal or disposal thereof, first had and obtained in writing, then and in such case it shall and may be lawful for the said party of the second part, his executors or administrators, with his or their servant or servants, and with such other assistant or assistants as he or they may require, at any time during the day to enter into and upon any lands, tenements, houses and premises, wheresoever and whatsoever belonging to, and in the occupation of the said party of the first part, his executors or administrators, where the said goods and chattels, or any part thereof, may be, and for such persons to break and force open any doors, locks, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and places, for the purpose of taking possession of and removing the said goods and chattels, and upon and from, and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the said party of the second part, his executors or administrators, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to him or them, or any of them, may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums and sum of money as may then be due by virtue of these presents on the said promissory note, or any renewal note or notes, as aforesaid, and all such expenses as may have been incurred by the said party of the second part, his executors or administrators, in consequence of the default, neglect or failure of the said party of the first part, his executors or administrators, in payment of the said note or notes as above mentioned, or in consequence of such sale or removal as above mentioned; and in the next place to pay unto the said party of the first part, his executors, administrators or assigns, all of such surplus as may remain after such sale, and after payment of all such sum and sums of money, and interest thereon, as he, the said party of the second part, shall be called upon to pay by reason of indorsing the said promissory note in the said recital and proviso mentioned,

or any renewal note or notes to be indorsed by the said party of the second part for the said party of the first part, as aforesaid, at the time of such seizure, and after payment of such costs, charges and expenses incurred by such seizure and sale, as aforesaid.

Provided always, nevertheless, that it shall not be incumbent on the said party of the second part, his executors or administrators, to sell and dispose of the said goods and chattels, but that in case of default in payment of the said note or notes as aforesaid, it shall and may be lawful for the said party of the second part, his executors, administrators and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels, without the let, molestation, eviction, hindrance or interruption of him, the said party of the first part, his executors, administrators or assigns, or any of them, or any other persons or persons whomsoever. And the said party of the first part doth hereby further covenant, promise and agree, to and with the said party of the second part, his executors and administrators, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due on the said note or notes at the time of such sale, that he, the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid, unto the said party of the second part, his executors or administrators, all such sum or sums of money, with interest thereon, as may then be remaining due upon the said note or notes.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.s.]

C. D. [L.s.]

### *Affidavit of Mortgagee.*

Ontario, County of } I, C. D., of, &c., the mortgagee in the  
To wit: } within mortgage named, make oath and  
say, that such mortgage truly sets forth the agreement entered into between the mortgagor therein named and myself, being the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that the said mortgage was executed in good faith and for the express purpose of securing me, the said mortgagee therein named, against the payment of the amount of my liability for the said mortgagor by reason of the promissory note therein recited, or any note or notes which I may endorse for the accommodation of the said party of the first part, as renewals of the said note; And not for the purpose of securing the goods and chattels mentioned therein against

the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor.

Sworn before me, at

C. D.

the of , in the  
County of , this  
day of , A. D. 18 .  
E. F.

J. P. or a Commissioner for taking Affidavits  
in and for the County of

### *Affidavit of Witness.*

Ontario, County of , to wit: I, Y. Z., of, &c., make oath and say, that I was personally present and did see the annexed Bill of Sale, by way of Mortgage, duly signed, sealed and delivered by A. B. and C. D., the parties thereto, and that I, this deponent, am a subscribing witness to the same; that the name Y. Z., set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at , in the said County of

Sworn before me, at  
the of , in the  
County of , this  
day of , A. D.  
18 .  
Y. Z.

E. F.

J. P. or a Commissioner for taking Affidavits  
in and for the county of

### *Chattel Mortgage.*

*(To secure future advances.)*

This Indenture made the day of 18 , Between A. B., of, &c., of the first part, and C. D., of, &c., of the second part. Whereas, [Here set forth fully by way of recital, the terms, nature and effect of the agreement for the future advances, and the amount of liability to be created, as for instance; "Whereas the said A. B. is desirous of entering into and carrying on the business of a dry goods merchant at the City of Toronto, and hath applied to the said C. D. to make him future advances not exceeding in the whole the sum of \$5,000, at such times and in such sums as he, the said A. B.,



may require the same. And whereas, by an agreement in writing, dated on the                    day of                    18                    and made between the said A. B. and C. D., the said C. D. hath agreed to make such future advances to the extent of \$5,000 to the said A. B. for the purpose aforesaid at such times, and in such sums as the said A. B. may require it: the whole to be repaid within one year from the date of the said agreement ") Now this Indenture witnesseth that the said party of the first part, in consideration of the premises, and in pursuance of the said agreement hath bargained, sold and assigned, and by these presents doth bargain, sell and assign unto the said party of the second part, his executors, administrators and assigns, All and singular the goods, chattels, furniture and household effects hereinafter particularly mentioned and described in the schedule hereunto annexed marked A. To have, hold, receive and take, all and singular the said goods, chattels, furniture and effects hereinbefore bargained, sold and assigned, or mentioned, or intended so to be, unto the said party of the second part, his executors, administrators and assigns forever. Provided always, and these presents are upon this condition, that if the said party of the first part, his executors or administrators do and shall well and truly pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the sum of \$5,000 or so much thereof as the said party of the second part shall advance to the said party of the first part, according to the terms of the said agreement, together with interest thereon at the rate of                    per cent. per annum, within one year from the date of the said agreement, then these presents and every matter and thing herein contained, shall cease, determine and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. Provided always that in case default shall be made in payment of the said sum of \$5,000, or so much thereof as may be advanced as aforesaid, and interest, contrary to the last mentioned proviso; or in case the said party of the first part shall attempt to sell or dispose of, or in any way part with the possession of, the said goods and chattels or any of them, or to remove the same or any part thereof out of the City of Toronto, without the consent of the said party of the second part, his executors, administrators or assigns, to such sale, removal or disposal thereof, first had and obtained in writing; then and in such case it shall and may be lawful for the said party of the second part, his executors, administrators or assigns with his or their servant or servants, and with such other assistant or assistants as he or they may require, peaceably and quietly to receive and take into his or their absolute possession, and thenceforth to hold and enjoy all and every, or any of the said goods and chattels: and upon and from and after taking possession of such goods and chattels as aforesaid, it shall and may be lawful and the said party of the second part, his executors, administrators and assigns, and each or any of them is and are hereby authorized and empowered, to sell the said goods and chattels, or any of them,

or any part thereof at public auction or private sale, as to him or any of them may seem meet, and from and out of the proceeds of such sale in the first place to pay and reimburse him and them all such sums and sum of money as may then be due by virtue of these presents, and all such expenses as may have been incurred by the said party of the second part, his executors, administrators, or assigns, in consequence of the default, neglect or failure of said party of the first part, his executors, administrators or assigns, in payment of the said sum of money with interest thereon as above mentioned and in the next place to pay unto the said party of the first part, his executors or administrators, all such surplus as may remain after payment of such sum or sums of money as aforesaid. And the said party of the first part, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned, shall not be sufficient to pay the whole amount due at the time of such sale, he the said party of the first part, his executors or administrators, shall and will forthwith pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, all such sum or sums of money, with interest thereon, as may then be remaining due.

And it is hereby also declared and agreed, that until default shall be made in payment of the said principal sum of \$5,000 and interest contrary to the aforesaid proviso, it shall be lawful for the said A. B., his executors or administrators, to make use of (but not to remove from the premises) the said goods, chattels and things hereby assigned or intended so to be without any hindrance or disturbance by the said C. D., his executors, administrators or assigns. And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said C. D., his executors and administrators, that he, the said A. B., hath not heretofore made, done, permitted or suffered, nor will at any time hereafter make, do, permit or suffer any act, deed, matter or thing whereby, or by means whereof, the said goods, chattels and premises hereby assigned are, is, can or may be in any wise impeached, charged, affected, incumbered or prejudicially affected in any manner howsoever; and also that he the said A. B., his executors or administrators will, so long as any money shall remain due on this security, insure and keep insured the said goods, chattels and premises from damage by fire, in some respectable insurance office, in the names of the said C. D., his executors, administrators or assigns, in the sum of \$ , and hand the policy for such insurance, and the receipt for the current year's premium, to the said C. D., his executors, administrators or assigns, on demand; and that in default of the said policy being so effected or kept on foot as aforesaid, it shall be lawful for the said C. D., his executors, administrators and assigns, to effect or keep on foot the same, and all the premiums and other expenses incurred by him or them in so doing shall be repaid on

demand by the said A. B., his executors or administrators, and until re-payment, the same shall be a charge on the said goods, chattels and premises hereby assigned, and shall bear interest after the rate aforesaid. And also that the said A. B., his executors and administrators, will, during the continuance of this security, keep the chattels, effects and premises hereby assigned, in good order, repair and condition in all respects, as they are in at the time of the execution hereof.

In witness whereof, the parties to these presents have hereupon set their hands and seals the day and year first above written.

Signed, sealed and delivered

in the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

*The Schedule above referred to marked A.*

*(Here set out a full and particular description of the goods, as required in the preceding forms.)*

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#### *Mortgagee's Affidavit.*

Ontario, County of \_\_\_\_\_, to wit : I, C. D., of, &c., the mortgagee in the within mortgage named, make oath and say, that the within mortgage truly sets forth the agreement entered into between myself and A. B., therein named, and truly states the extent of the liability intended to be created by such agreement, and covered by the within mortgage. That the within mortgage is executed in good faith, and for the express purpose of securing to me the re-payment of the advances agreed to be made as within mentioned, and not for the purpose of securing the goods and chattels mentioned therein, and set forth in the schedule attached thereto, marked A, against the creditors of the said A. B., nor to prevent such creditors from recovering any claims which they may have against the said A. B.

Sworn before me at  
the day of \_\_\_\_\_,

C. D.

18 .

F. W.,

A Commissioner, &c.

*Affidavit of Witness, same as in preceding Forms.*

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#### *Bill of sale.*

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and eighty \_\_\_\_\_, Between A. B. of, etc., of the first part, and C. D. of, etc., of the second part,

Whereas, the said party of the first part is possessed of the goods, chattels and effects hereinafter set forth, described and enumerated, and hath contracted and agreed with the said party of the second part for the absolute sale to him of the same for the sum of dollars.

Now this Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of dollars of lawful money of Canada paid by the said party of the second part to the said party of the first part, at or before the sealing and delivery of these presents (the receipt whereof is hereby by him acknowledged) he, the said party of the first part, hath bargained, sold, assigned, transferred and set over, and by these presents, doth bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators and assigns, all those the said goods, chattels and effects which may be more particularly described as follows (*describe accurately*) all which said goods, chattels and effects are contained in a dwelling house, situate and being at, etc.

And all the right, title, interest, property, possession, claim and demand whatsoever, both at law and in equity or otherwise howsoever, of him the said party of the first part, of, in, to or out of the same, and every part thereof.

To have and to hold the said hereinbefore assigned goods, chattels and effects, and every of them and every part thereof, with the appurtenances and all the right, title and interest of the said party of the first part therein and thereto as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns to and for his and their sole and only use for ever; and the said party of the first part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators in manner following, that is to say, that he the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned goods, chattels and effects, and every of them and every part thereof.

And that the said party of the first part now hath in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents; and that the said party hereto of the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods, chattels, and effects and every of them and every part thereof, to and for his own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the first part, or any person or persons whomsoever, and that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, titles, charges and incumbrances whatsoever.

And moreover that he the said party of the first part, and all persons rightfully claiming or to claim any estate, right, title, interest of, in or to the said hereby assigned goods, chattels and effects, and every of them and every part thereof, shall and will from time to time and at all times hereafter, upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the costs and charges of the said party of the second part, make, do and execute, or cause or procure to be made, done and executed all such future acts, deeds and assurances of the same for the more effectually assigning and assuring the hereby assigned goods, chattels and effects unto the said party of the second part, his executors, administrators or assigns in manner aforesaid, and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators and assigns, or his or their counsel in the law shall be reasonably advised or required.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered, )  
in the presence of

A. B. [L.s.]

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*Affidavit of bargainee.*

County of                    ) I,                    of                    in the foregoing  
to wit:                    ) bill of sale named, make oath and say:—  
That the sale therein made is bona fide, and for good consideration  
namely: the actual present payment in hand to the bargainor by the  
bargainee, of the sum of                    dollars in cash, and not for the  
purpose of holding or enabling me this deponent to hold the goods  
mentioned therein against the creditors of the said bargainor or any  
of them.

Sworn, etc.

*A Commissioner, &c.*

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## CONSTABLES.

The following sections are, with permission, selected from an excellent little work entitled *The County Constables' Manual*, by J. Jones, High Constable of the County of York, Ontario, and published in Toronto. The subject is fully and ably treated in this little work, which should be in the possession of every constable, as it contains a full and accurate exposition of the law, portions of which only can be given in a work like the present.

*Appointment of Constables in Ontario.*

The Justices may, from time to time, at any sitting or adjourned sitting of the Court of General Sessions of the Peace, appoint a County High Constable and a sufficient number of fit and proper persons to act as constables in each township, incorporated village, police village, and place within the county, and may in like manner, from time to time, in their discretion, dismiss any constable so appointed.

To prevent injurious delays arising from the long intervals between the sittings of the General Sessions, the County Judge may at any time appoint constables for the County of which he is Judge.

Persons appointed shall, before entering on the duties of their office, take and subscribe the following oath, which any Justice of the Peace may administer.

*Oath of Office.*

I, A. B., having been appointed constable for the county of \_\_\_\_\_, do solemnly swear that I will truly, faithfully and impartially perform the duties appertaining to the said office, according to the best of my skill and ability.

So help me God.

Sworn before me, etc.,

J. P.

"If a constable, duly appointed and notified, refuse to take the necessary oath, or refuse to execute the office, he is guilty of a serious offence, and may be punished by fine or imprisonment. It

is not necessary there should be an actual refusal, for if the party do not attend to be sworn in before the Justice, or afterwards do not execute his office, it is evidence of his refusal to do so, and for this he may be indicted either at the Assizes of Oyer and Terminer or General Sessions. (Archbold, C. P., 932; Burns, J. P., 1085).

"If a constable refuses to be sworn, a Justice of the Peace may at once bind him over to the Oyer and Terminer or General Sessions to answer for contempt, but there is no power vested in Magistrates to punish by summary conviction." (Dalton, cap. 28).

#### *Arrest.*

An arrest is the apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. The constable should not merely content himself with securing the offender, but should actually arrest him, so that if he escape, or is rescued by others, he or they may be subject to the penalties of escape or arrest. To constitute an arrest the party should, if possible, be touched by the constable, who should say, *I arrest you*, or *You are my prisoner*. Bare words will not make an arrest without laying hold of the person or otherwise confining him. But if an officer come into a room and tell the party he arrests him, and locks the door, this is an arrest, for he is in custody of that officer; or if in any other way the person submit himself by word and action to be in custody, it is an arrest. (Patton).

Every officer, upon demand made upon him must shew the warrant under which he arrests or distrains. (Wilson, P. 51-52).

If the party snatch or take the warrant, the constable has a right to force it from him, using no unnecessary violence in doing so.

Where a constable has made an arrest with or without warrant, he should as soon as possible bring the party before the Justice according to the terms of the warrant; and if guilty of any unnecessary delay he will be liable to punishment; but if the arrest be made in or near the night, or at a time when the prisoner cannot well be brought before the Justice, or if there be danger of rescue, or the party be ill and unable then to be brought up, the constable may secure him in the county gaol, in a lock-up house, or other safe place, till the next day, or until it may be reasonable to bring him up before the Justice; but a warning is again given against any unreasonable detention. (Patton). In case a lock-up be found most convenient, it will be necessary to employ a constable to watch the prisoner at night, unless the municipality in which the lock-up is situate keep a watchman for this purpose.

32-33 Vict. cap. 31, sec. 6 (Summary Convictions). It is laid down that where a warrant is issued in the first instance, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each party arrested at the time of such arrest.

*Breaking Open Doors.*

Breaking open an outer door or window to enter a man's house, is an objectionable and dangerous proceeding, and should only be resorted to in extreme cases. The peace and security of private dwellings is a matter of great importance. It is only in matters of high concern to the public, and to prevent the ends of justice being frustrated, that the law permits its officer to have recourse to this obnoxious proceeding.

The officer is therefore in no case justified in breaking open outer doors, or the windows or other parts of a house, until—

1. He has declared his business; 2. demanded admission; and, 3. allowed a reasonable time for opening them to elapse, and they have not been opened in that time.

*Under warrant.*—Upon a warrant for felony or suspicion of felony, or to compel sureties of the peace, or for a breach of the peace, the constable to whom a warrant is directed may break open outer doors to effect an arrest, if the party is in his own house, or has taken refuge in the house of another, after notification, demand and refusal, as has been already stated. (Patton). A constable may break in to apprehend on a *capias* founded on indictment for any crime, or in the daytime on a warrant to search for stolen goods, if accompanied with a direction to bring the party before a Justice, or to enforce the law where a forcible entry or detainer is found by Justices, either on an inquest or their own view, or on a warrant of Justices for levying a fine or execution of a judgment on conviction grounded on a statute that gives all or any part of the penalty to the Queen. (Wilson).

*Without warrant.*—The constable's authority to break open doors by virtue of his office, as conservator of the peace acting without a warrant, is strictly confined to cases where an actual breach of the peace is committed in his view, or where he sees a felony committed, or has grounds to apprehend that a felony is likely to be committed, or if an affrayer run into a house to escape arrest, the constable in hot pursuit would be justified in effecting an entrance by force to take him. (Nevertheless, in mere breaches of the peace, if he know the parties, he had better obtain a warrant instead of taking this course). Also where a violent affray is going on in a house in the view or hearing of a constable, which is likely to result in bloodshed or loss of life (as where there is a violent cry of murder in the house), the necessity of the case will authorize the constable to get into the house in the readiest manner he can, to stop the affray and prevent further violence or bloodshed.

Where one is known to have committed a felony or given a dangerous wound, and is pursued by a constable who is denied admittance into a house wherein the offender is sheltered, the door may be broken in order to take him. It would, however, be otherwise, if there was only a mere suspicion of guilt; a warrant should be obtained.



If the house in which an offending party is supposed to have taken refuge is not his own house, the constable should be sure that the felon is there; for, if not there, the constable would in most cases be considered in law a trespasser. (Patton).

So, if there be noise or disorderly conduct or drinking in a house at an unreasonable time of the night, and particularly in a tavern, he may break open the house to put a stop to it.

If an officer have entered the house in a legal manner, and the outer door is fastened upon him, he and others in his aid may break open the door to set him at liberty.

The maxim that "Every man's house is his castle," only applies to the dwelling house. (Wilson).

### *Constables.*

A constable must readily and strictly obey all lawful orders of Justices of the Peace, Coroners, and the officers placed over him by the General Sessions of the Peace.

He must be very civil and respectful in his demeanor and conduct to the public, giving the best answers he can to the numerous questions which will be put to him, and showing at all times a readiness to do all in his power to oblige consistently with his duty.

He is to speak the truth at all times and under all circumstances, and when called upon to give evidence, to state all he knows respecting the case without fear or reservation, and without any desire to influence the result, either for or against the prisoner.

To enable him to speak quite confidently and to prevent the possibility of his evidence being shaken, he is to jot down at the time in his memorandum book dates and other particulars respecting arrests or occurrences, to which he can always refer.

When called upon by a person to take another into custody, he must be guided in a great measure by the circumstances of the case and the nature of the charge or offence; but if he have any doubt as to how he ought to act, the safest course is to ask all the persons concerned to go with him to the nearest Justice, who will direct the constable.

If a constable is called upon to act he must do so with energy, promptness and determination, for, if he wavers or doubts, the criminal may escape, or the opportunity to render assistance may be lost. (T. P. F. eg).

(Authority)—The authority of constables is general and special, the office partaking of the nature of both. The general authority accrues by virtue of their own right as officers; the special authority accrues by the right of some one else. All constables are conservators of the peace by right of their office, and are also the immediate and proper officers of Justices of the Peace.

Constables, by virtue of their inherent powers, may act without warrant in the prevention of crime, and for the arrest of offenders. (See *Warrant, arrest without*).

As the immediate and proper officers of Justices of the Peace, constables act under, and are bound to obey, the lawful mandates of the magistrates of their county.

*The office of constable in Canada is coincident with the introduction into the Province of the commercial law of England. It is of great antiquity; but whether constables came in with Justices of the Peace, or existed at common law in England, is of little moment to us; but the law-writers who have examined the question say that constables existed as subordinate conservators of the peace long before Justices of the Peace were made by the 1st Edward III, A.D., 1327.*

#### *Coroners' Constables.*

It will be the duty of a constable, should a death occur from violence or unfair means, or through culpable or negligent conduct (of any other person than deceased), to notify the nearest coroner while the body is fresh, and, if possible, while it remains in the same situation as when the party died. He should attend the coroner when he arrives, and if the coroner considers an inquest necessary, the constable, on receiving the warrant to summon the jury, should immediately summon and make his return thereon. The constable officiating at an inquest opens the proceedings by proclamation, assists the coroner, preserves order, and is to obey all lawful orders of the coroner. The coroner has by law the right to do all acts which are necessary to enable him to hold his inquest on the view of the body; and as incidental to this right, he could break open doors to get at the body; and those who obstruct him in so doing are guilty of a misdemeanor, and a constable who is present is bound to protect him.

*(Proclamation before calling jury).* Oyez, Oyez, Oyez. You good men of this county summoned to appear here this day, to inquire, for our Sovereign Lady the Queen, when, how, and by what means R—— F—— came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon. God save the Queen.

*(Proclamation for default of jurors).* Oyez, Oyez, Oyez. You good men who have been already severally called, and have made default, answer to your names and save your peril. God save the Queen.

*(Proclamation for witnesses).* Oyez, Oyez, Oyez. If any one can give evidence on behalf of our Sovereign Lady the Queen, when, how, and by what means R—— F—— came to his death, let him come forth, and he shall be heard. God save the Queen.

*(Proclamation of adjournment).* Oyez, Oyez, Oyez. All manner of persons who have anything more to do at this Court before the Queen's coroner for this county, may depart home at this time, and give their attendance here again (or at the adjourned place) on next, being the                    day of                    instant, at                    of the clock, in the                    precisely. God save the Queen,

*(Proclamation at adjourned meeting).* Oyez, Oyez, Oyez. All manner of persons who have anything more to do at this Court before the Queen's coroner for this county on this inquest now to be taken and adjourned over to this time and place, draw near and give your attendance; and you, gentlemen of the jury, who have been impannelled and sworn upon this inquest touching the death of R—— F——, severally answer to your names and save your recognizances.

*(Proclamation at the close of inquest).* Oyez, Oyez, Oyez. You good men of this county who have been impannelled and sworn of the jury to inquire, for our Sovereign Lady the Queen, touching the death of R—— F——, and who have returned your verdict, may now depart hence and take your ease. God save the Queen.

*Refusing to Assist a Constable.*

To suppress an affray or accomplish an arrest, a constable may call to his assistance any private person present, who will be bound to render aid under the penalty of severe punishment for refusal or neglect; but the constable must carry this in mind, that to warrant his interference there must be evident appearance that a felony or other crime against the Queen's peace is on the point of being committed; and this caution also may be given as to threats, that mere rash words or abusive or violent language used to the constable or to any other person, unless calculated to deter the officer from doing his duty, or directly tending to a breach of the peace, would not of themselves form a sufficient ground for the arrest of the wrong doer. (Patton, 16).

And on page 26, the same writer says: "I would reiterate, that whenever necessary, a constable may call upon any by-stander in the Queen's name to assist him in making an arrest, or securing an offender; and that private persons acting in aid of the officer are entitled to the same indemnity as the officer, for their acts in his aid."

*Search Warrant.—32-33 Vict. Cap. 30. sec. 12.*

In executing a search warrant, the constable must be careful strictly to pursue its directions. The warrant (Form E. 2) commonly specifies the place to be searched, the goods to be seized and the person to be taken. If the outer door of the house to be searched be shut, and upon demand not opened, the constable may break it open, and so may inner doors, boxes, etc., after the keys have been demanded and refused.

The constable should not take away any goods but those specified in the warrant, unless they are indispensable in substantiating the charge of stealing the goods specified. The constable should take with him materials for striking a light, if necessary, and he should take sufficient time to make a thorough search. The owner of the

goods should, in all cases, accompany the constable to point out the goods, in order to prevent mistakes.

The constable, in accordance with the warrant, should have necessary and proper assistance to watch outside, to prevent the goods being taken away or the accused person escaping.

When the goods, or any portion of them, are found, the constable is to bring them and the person before the Justice, according to the directions of the warrant subject to his order. If the accused be committed for trial, the constable should make an inventory of the goods in his memorandum book, and mark the exhibits so as to be identified by him. If a horse is the subject of the larceny, the best plan would be to hand him over for safe keeping to the owner, on his entering into a recognizance to prosecute, and giving a guarantee that the horse shall be forthcoming.

#### *Warrants, Arresting on.*

When a warrant is placed in a constable's hands for execution, he should satisfy himself that it is under the hand and seal of the Justice issuing same, that it is properly directed, viz.: "To all or any of the constables or other peace officers in the county of, etc., etc." (32 and 33 Vict., cap. 30, form B). It shall state shortly the matter of the information or complaint on which it is founded.

It shall name or otherwise describe the person against whom it has been issued.

It shall order the constable to apprehend the defendant, and to bring him before the Justice issuing the warrant, or some other Justice, to answer the said charge.

It need not be made returnable at any particular time, but may remain in force until it is executed.

If the warrant is found deficient in any particular it should be taken to the Justice who issued it to have its defects rectified. The constable should make an entry in his memorandum book of the time of its receipt, and the necessary particulars.

The warrant should be executed with secrecy and despatch, and after execution the constable should endorse it with the date of its execution.

The constable should also ascertain from the warrant the nature of the offence, and whether he knows the party named in the warrant; if not he should find out from the complainant the description, personal appearance, manner, dress, or any peculiarity by which he may be recognized, and it would be advisable for the constable, if possible, to take the complainant or some person who could point out the accused.

An arrest may be made in the night as well as the day, but not on Sunday, unless the offence charged includes a breach of the peace or felony.

The accused should be brought without delay before the proper Magistrate, and it is the duty of the Magistrate to make such

arrangements with the officer who is entrusted with the execution of the warrant, that the case be brought on to a hearing as speedily as possible after the arrest. To detain an accused person for an unreasonable time would be very improper, illegal and unjust.

If the accused person escape, go into or reside in another county, it will be necessary for the constable to have the warrant endorsed by a Justice having jurisdiction where the accused is. The constable, therefore, will wait upon a Justice having such jurisdiction, who will endorse the warrant on the constable making oath as to the signature of the Justice who issued the warrant (32-33 Vict. cap. 30, sec. 19), or, in case of fresh pursuit, at any place in the next adjoining territorial division, and within seven miles of the border of the first division, without having the warrant backed. Under 32-33 Vict. cap. 30, sec. 8, any Justice may grant and issue a warrant to apprehend any one charged for an indictable offence, or a search warrant on a Sunday as well as on any other day. It is also provided that no warrant or other process shall be served on the Lord's Day, except in cases of treason, felony or breach of the peace.

*Without Warrant.—32-33 Vict., Cap. 29, Sec. 2.*

Any person found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable or peace officer without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorized by such owner, and shall be forthwith taken before some neighbouring Justice of the Peace to be dealt with according to law.

A constable may arrest for any felony committed in his presence, and he is bound at all risks to use his best endeavours to do so. Nothing short of imminent danger to his life will excuse him for allowing the offender to escape.

He may also arrest on his own suspicion that a felony has been committed, and that the party he arrests is or was concerned in it.

When he arrests upon his own suspicion, it must not be upon any loose, vague suspicion, either of an offence having been committed, or of its having been committed by the person arrested, but he must, in the language of the law, have reasonable and probable cause for believing both of these facts. If he arrest without having reasonable and probable cause for so doing, he will be liable to answer in damages to the aggrieved party for making the arrest, but if he arrest under justifiable circumstances, he will not be liable for making the arrest, although the party taken was not concerned in the felony, nor will he be liable even although there was no felony at all committed. So, also, if a constable arrest one for a felony upon information derived from another, he will be fully authorized in doing so, if he had reasonable and probable cause for believing the information he got to be correct, and he will not be liable, although, as before stated, no felony, in fact, had been committed at all. (Wilson, 35).

The constable, however, must be careful that he has such reasonable and probable cause to justify his proceedings, for, if he have not, he will be liable, in like manner as any one else would be, for his malicious conduct. The constable then should consider—

(1) Who it is that gives him information.  
 (2) Who the person is who is alleged to have committed the offence.

(3) The general probability of the facts narrated. For instance, a constable is not justified in apprehending a person, as receiver of stolen goods, on the mere assertion of the principal felon.

So it also follows, if he arrest on his own suspicion of the party being a felon, or upon information communicated to him by another, he should not detain the party arrested after his suspicions are, or ought to be, entirely removed, or if he discover the information which was given him to be false or untrustworthy. (Wilson, 36).

Thus, if a constable arrest on a suspicion of theft, and after searching the party discover nothing, and the suspicion appears to be groundless, he may discharge the party out of his custody without taking him before a Magistrate.

A constable may arrest on information of others that a party has committed a felony. Thus, if a reasonable charge of felony is made against a person who is given in charge to a constable, the constable is bound to take him, and he will be justified in so doing, though the charge may turn out to be unfounded.

A constable may justify an arrest on a reasonable charge of felony without warrant, although it should afterwards appear that no felony had been committed, but a private individual cannot.

A constable is justified in apprehending a person on suspicion of felony, if he have reasonable or probable cause to believe that the party charged is the felon.

Also, any person whom he finds loitering on any highway, yard, or other place, during the night, and whom he has good cause to suspect of having committed, or being about to commit, a felony, and detain such person, and bring him before a Justice, before noon the following day, to be dealt with according to law. (32-33 Vict. cap. 29, sec. 5).

A constable is bound to take up any one committing a breach of the peace in his view. He may also, when there has been a breach of the peace, though not in his presence, and in order to prevent a renewal of it, arrest one whom he has good reason to believe is about to break it.

But, when no breach of the peace has taken place in his view, and there is no likelihood of its being broken, he cannot, either at his own instance or a complaint of any one, without a warrant, unless specially authorized by statute. Neither can a constable receive any person from another, who has been arrested by that other, for an alleged breach of the peace, unless at his own risk; that is, if the party taken have broken the peace, the constable will be right in

receiving him into his custody, but if he have not, the constable will be liable in taking him, in like manner as the other will who delivered him to the constable.

The general rule, therefore, for a constable is never to arrest or receive any one into his custody for any offence less than a felony, unless—

- (1) The constable has either seen the offence committed, or
  - (2) Fears a breach of the peace, or
  - (3) Unless a warrant authorizing the arrest is delivered to him.
- (Wilson, 25.)

#### NOVA SCOTIA.

In case of riot, tumult or disturbance, or of just apprehension thereof, outside of Halifax or any incorporated town, three justices of the peace may by writing appoint any number of special constables, their appointment to continue in force fourteen days; in case of disturbance at any public meeting, any justice, at the request of the chairman of the meeting, or of three freeholders, may verbally appoint special constables to preserve the peace. Neglect or refusal to act incurs a penalty of eight dollars. Ordinary constables are appointed by the Municipal Council.

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## DEEDS.

THE LEGAL and technical definition of a deed is a writing *sealed* and *delivered*. Bonds, therefore, and assignments and chattel mortgages, of which we have treated in previous chapters, are all deeds: that is to say, they are writings *sealed* and *delivered*. The popular idea of a deed, however, is commonly associated with the transfer of land, and it is in this sense in which we shall speak of a deed in this chapter.

A deed of land, then, is a writing sealed and delivered by the parties, by which lands, tenements or hereditaments are conveyed by one person to another. It may be either written or printed, or partly written and partly printed, and on paper or parchment. Figures, as a general rule, should be avoided, and all words written in full without abbreviation or contraction. The name, residence and occupation or addition of every party to the deed should be carefully inserted, and also some date: properly the date of the day of execution, but not necessarily; for a deed may legally be dated on one day, and not executed until some other and subsequent day. Care should be used in describing the lands conveyed; an error here may entail considerable expense before it can be rectified. If a whole township lot be conveyed, it will be sufficient to describe it as lot number so and so, in such a concession, township and county, comprising so many acres. If a portion only be conveyed, describe accurately the part intended; as the north or south half, or north-east or south-west quarter, as the case may be. Where the boundaries are well known, and especially where



only a portion of a lot is conveyed, it will be desirable to describe the premises by metes and bounds ; giving the course or magnetic bearings, and the measurement of each side. A well prepared deed should contain no alterations or interlineations of any kind ; they will not, however, invalidate the instrument ; but if necessary to be made, the fact that they were so made before signature of the deed should be stated in the attestation clause at the foot, and the witness should put his initials in the margin, opposite all such alterations or interlineations, so that he may be the better able, if ever called on, to prove that they were so made before execution. When once signed and executed, a deed must not be altered, as any such alteration might wholly vitiate the deed.

The person conveying the land is called the *grantor* ; the person to whom it is to be conveyed is called the *grantee*. If the grantor is a married man, his wife should, in all Provinces where she is by law entitled to dower, join in the deed and bar her dower ; otherwise, when her husband dies she will be entitled to one-third of the land conveyed for her life time. Land may be conveyed in such a manner as to preclude the wife of the party to whom it is conveyed from any right to dower on her husband's death ; but the species of deed by which this may be done is very special, and can only safely be prepared by a professional man.

In preparing deeds, care should be taken that all persons whose interests in the property are intended to be conveyed should be made parties to and should duly execute the instrument. Minors, or persons under twenty-one years of age, are incapable of making a binding disposition of their lands, unless under the sanc-

tion of an order of a Court of competent jurisdiction. The same may be said of lunatics and idiots, whose interests may be transferred only by order of a Court, or by trustees or committees appointed or sanctioned by it. The power of corporations to convey depends upon the extent of the rights and privileges conferred upon them by law, and the method in which they execute conveyances is usually determined by statute. With regard to married women, the form in which a conveyance of their lands must be drawn and attested differs in the various Provinces, and an explanation of the formalities required in each is deemed unnecessary in this connection.

Every deed should be *signed* by the grantor. It is not necessary that the grantee should sign unless the deed contains some covenant on his part. The ordinary way of executing a deed is for the party conveying to sign his name in his usual manner, opposite the seal at the foot, and placing his finger on the seal to say "I deliver this as my act and deed." If the person should be unable to write, he may execute by mark. In this case some person should write opposite the seal the words "A. B. his mark," leaving space in the middle for the mark to be made—usually a cross: thus A. <sup>his</sup>X B. The mark must, of <sub>mark</sub> course, be made by the party himself, though his hand may be guided, or he may do it by simply touching the pen while the mark is being made by some other person for him. Before a deed is executed by an illiterate person, or, indeed, by any person if he so requests, it ought to be read over and explained, so that he may fully understand what he is doing.

Before purchasing property it is essential that the title to it should be properly investigated. Registry offices are established in every County and District, where all deeds and other instruments affecting land ought to be registered.

In Ontario, a deed of land should be executed in duplicate—one copy whereof will be left in the registry office, and the other retained by the party. Upon the deed intended to be left in the registry there must be an affidavit of execution made by the attesting witness. It is sufficient if this affidavit be only placed on such one; but it is usual and convenient to have an affidavit on both.

In Ontario, to secure registration, an affidavit of a subscribing witness to the deed must be made (upon the instrument, or securely attached to it) which, after setting forth the name, place of residence and addition or occupation of the witness, in full, must show the following facts:—(i) The execution of the original deed and duplicate, if any there be; (ii) the place of execution; (iii) that the witness knew the parties to the instrument, if such be the fact; or that he knew such one or more of them, according to the fact; (iv) that he is a subscribing witness thereto. The affidavit is, under provisions of the Ontario statute, to be made before some one of the following persons:

1. If made in Ontario, it shall be made before—

The Registrar or Deputy Registrar of the County in which the lands lie,

Or, before a Judge of any of the Superior Courts of Law or Equity,

Or, before any Judge of a County Court within his County,

Or, before a Commissioner authorized by any of the Superior Courts to take affidavits. 31 V. c. 20, s. 41 (1).

Or, before any Justice of the Peace for the County in which such affidavit is sworn. 39 V. c. 25, s. 3.

2. If made in Quebec, it shall be made before—  
 A Judge or Prothonotary of the Superior Court, or Clerk of the Circuit Court,  
 Or, before a Commissioner authorized under the laws of Ontario to take, in Quebec, affidavits in and for any of the Courts of Record in the Province of Ontario,  
 Or, before any Notary Public in Quebec, certified under his official seal. 31 V. c. 20, s. 41, (2); 34 V. c. 14, ss. 2 & 6; C. S. C. c. 79, s. 3.
3. If made in Great Britain or Ireland, it shall be made before—  
 A Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland, or of the High Court of Chancery, or of the Court of Queen's Bench, Common Pleas, or Exchequer, in Ireland,  
 Or, before a Judge of any of the County Courts within his County,  
 Or, before the Mayor or Chief Magistrate of any City, Borough, or Town corporate therein, and certified under the common seal of such City, Borough or Town corporate.  
 Or, before a Commissioner authorized to administer oaths in the Supreme Court of Judicature in England, or before a Commissioner authorized by the laws of Ontario to take, in Great Britain or Ireland, affidavits in and for any of the Courts of Record in the Province of Ontario,  
 Or, before any Notary Public, certified under his official seal. 31 V. c. 20, s. 41 (3); 34 V. c. 14, ss. 2, 4 & 6; 40 V. c. 7, *Sched. A.* (126).
4. If made in any British Colony or Possession, it shall be made before—  
 A Judge of a Court of Record, or of any Court of Supreme Jurisdiction in the Colony,  
 Or, before the Mayor of any City, Borough or Town corporate, and certified under the common seal of such City, Borough or Town,  
 Or, before any Notary Public, certified under his official seal,  
 Or, if made in the British Possessions in India, before any Magistrate or Collector, certified to have been such under the hand of the Governor of such Possession,  
 Or, before a Commissioner authorized by the laws of Ontario to take, in such British Colony or Possession, affidavits in and for any of the Superior Courts of the Province of Ontario. 31 V. c. 20, s. 41 (4); 34 V. c. 14 ss. 2, 4 & 6.
5. If made in any Foreign Country, it shall be made before—  
 The Mayor of any City, Borough or Town corporate of such country, and certified under the common seal of such City, Borough or Town corporate,  
 Or, before any Consul, Vice-Consul, or Consular Agent of Her Majesty, resident therein,

- Or, before a Judge of a Court of Record, or a Notary Public, certified under his official seal,
- Or, before a Commissioner authorized by the laws of Ontario to take, in such country, affidavits in and for any of the Courts of Record of the Province of Ontario. 31 V. c. 20, s. 41 (5); 34 V. c. 14, ss. 2, 4 & 6.

The fees for registering a deed are \$1.40 where the document does not exceed 700 words in length; if it exceeds that number, then fifteen cents for every additional 100 words up to 1400, and ten cents for each 100 words over 1400. If the instrument embraces different lots or parcels of land situate in different localities in the same county, then the Registrar is entitled to 40 cents for the necessary entries and certificates, and fifteen cents for every 100 words up to 1400, and ten cents for every 100 words over that number.

A corporation usually executes a deed by affixing to it its common seal and signing by its chief officer, as Mayor, President, etc. No affidavit is necessary to prove the execution of a deed by a corporation; the seal alone is sufficient evidence. Where land is conveyed to a corporation, the word "successors" should be used in place of the word "heirs," in referring to it.

In Ontario and Manitoba, short forms of deeds of grant are established by statute, the abbreviated covenants in which are given an amplified meaning therein fully set forth. The object of enactments of this nature is to save unnecessary expense of registration.

Where one person has, by power of attorney under seal, authority to execute a deed of lands for another, the power should be registered or attached to the deed and duly verified or authenticated.

The only forms of deeds given here are the common forms of bargain and sale used in the

ordinary conveyance of real property. The forms given are with *absolute* covenants and with *qualified* or *limited* covenants. The former are very extensive, and ought not to be given without some sufficient reason, as they bind the grantor with reference to the acts of all parties through whom the property may have passed. Limited covenants, on the contrary, are confined to the acts of the grantor himself and those claiming under him.

A *quit claim deed*, if made to a party already possessing some interest in the land, releases all the interest which the grantor has in the land, whatever it may be.

A *deed poll* is made by one party only, as in the case of a sheriff's deed.

A *trust deed* is made to a person called a trustee, who is to hold the land for the use or benefit of some other person. The wife of the trustee is not entitled to dower in the land.

Where deeds are made without any consideration, they may be set aside in favour of the creditors of the grantor, and of purchasers from him in good faith and for valuable consideration.

#### NOVA SCOTIA.

The same general principles as to registry as are in force in Ontario, apply in Nova Scotia. By cap. 84 of Revised Statutes, a Registrar is appointed for every County and District in the Province, with whom all deeds, mortgages, judgments and attachments binding lands, are to be recorded. Deeds, etc., are copied out in the registry books in full.

The execution of deeds is proved either on the affidavit of a subscribing witness, or on the personal acknow-

ledgment of the parties under oath. Such oath is administered, in the Province, by the Registrar, or any Judge of the Supreme Court of the Province, or Justice of the Peace; out of the Province, it is administered by any commissioner appointed to take affidavits without the Province, a Judge of any Court of Record, Mayor of a city, Justice of the Peace, or Notary Public, acting where the deed is proved; or any consul or vice-consul of Great Britain. If all the witnesses to a deed are dead, or absent from the Province, the deed may be registered upon sufficient proof of the handwriting of any witness, or of the parties. No particular forms are necessary.

#### BRITISH COLUMBIA.

A Land Registry Office is established at Victoria, and district registries in other parts of the Province. Before any deed or instrument is recorded or registered, its execution must first be acknowledged or proved in the manner provided by the Registry Act, and the fact of such acknowledgment or proof must be certified by endorsement upon such deed or instrument. The acknowledgment or proof of instruments, if made within the Province, may be made before—

1. The Registrar or Deputy-Registrar;
2. Any Stipendiary Magistrate;
3. Any Judge or Registrar of any Court having a seal;
4. Any Notary Public practising within the Province.

If acknowledged or proved without the Province, and within British Dominions, it may be made before—

1. Any Judge, Clerk or Registrar of any Court having a seal;

2. Any Notary Public ;
3. Any magistrate of any town or district, having a seal of office ;
4. Any commissioner appointed for the purpose.

## MANITOBA.

The law of registration is similar to that of Ontario. The affidavit of execution must be made as follows :

(1) If made in Manitoba—before the registrar or deputy registrar of the County in which the lands lie, or, a Judge of any of the Superior or County Courts; or, a commissioner. (2) If made in any other Province of the Dominion—before a Judge or Prothonotary of any of the Superior Courts of Law or Equity; or, before any Notary Public, certified under his official seal. (3) If made in Great Britain or Ireland, or any Province in Canada—before a Judge of any of the Superior Courts of Law or Equity therein, or a Judge of any County Court, within his County; or before the Mayor or Chief Magistrate of any City, Borough, or Town corporate herein and certified under the common seal of such City, etc.; or any Notary Public, or a Commissioner. (4) If made in any British Colony or possession—before a Judge of a Court of Record; the Mayor of any City, Borough, or Town corporate, and certified under the common seal of such City, etc., or any Notary Public. (5) Or if made in the British Possessions in India—before any Magistrate, or Collector, certified to have been such under the hand of the Governor of such Possession. (6) If made in any foreign country—before the Mayor of any City, Borough, or Town corporate of such Country, and certified under the common seal of such City, etc.; or before any consul of Her Majesty resident therein; or a Judge of a Court of Record, or Notary Public. (7) If made in the N. W. Territories or Keewatin—before a Judge of any Court, or Police Magistrate, or a Commissioner authorized to take affidavits by any Court, or before any J. P. or N. P. certified under his official seal.

## NEW BRUNSWICK.

Registry offices are established in every County. Wills must be registered within six months of the death of the testator, if his death occurs in the Province, and within three years from such death if the same occurs out of the Province. All conveyances must be registered, as well as leases of more than 'three years' duration.



## FORMS.

*Deed of Grant.**(Absolute Covenants)*

This Indenture made (in duplicate) the       day of       , 18       Between A. B., &c., of the first part, C. D., wife of the said party of the first part, of the second part, and G. H., of, &c., of the third part; *Witnesseth*, that the said party of the first part, in consideration of the sum of \$500, of lawful money of Canada, to him, by the said party of the third part, in hand well and truly paid, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), doth grant unto the said party of the third part, his heirs and assigns, All and singular that certain parcel or tract of land and premises situate, lying and being in the (*here describe the lands*), Together with the appurtenances: To have and to hold the same lands, tenements, here titaments, and all and singular other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, his heirs and assigns, to the sole and only use of the said party of the third part, his heirs and assigns forever. Subject, nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the second part, with the privity and full approbation and consent of her said husband, testified by his being a party to these presents, in consideration of the premises, and also in consideration of the further sum of five shillings of lawful money of Canada aforesaid, to her by the said party of the third part in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted and released, and by these presents doth grant and release, unto the said party of the third part, his heirs and assigns, all dower, and all right and title thereto, which she, the said party of the second part now hath or in the event of surviving her said husband might or would have in, to or out of the lands and premises hereby conveyed or intended so to be.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant promise and agree with and to the said party of the third part, his heirs and assigns, in manner following, that is to say; That he, the said party of the first part, now hath, in himself, good right, full power and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said party of the third part, in manner aforesaid and according to the true intent and meaning of these presents; And that it shall be lawful for the said party of the third part, his

heirs and assigns, from time to time and at all times hereafter peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said lands and premises hereby conveyed or intended so to be, with their and every of their appurtenances, and to have, receive and take the rents, issues and profits thereof, and of every part thereof to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him, the said party of the first part, or his heirs, or any other person or persons whomsoever; And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part or his heirs well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognition, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble and incumbrance whatsoever; And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them or any of them, shall and will from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said party of the third part, his heirs or assigns, make, do or execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devises, conveyances and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the third part, his heirs and assigns, in manner aforesaid, as by the said party of the third part, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required: so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of

E. F.

A. B. [L.s.]

C. D. [L.s.]

Received, on the day of the date of the within Indenture, the sum of \$500, of lawful money of Canada, being the full consideration therein mentioned.

A. B.

Witness,

E. F.

*Same with Qualified Covenants.*

This Indenture, made (in duplicate) the            day of            18   ,  
Between A. B. of, &c., of the first part, C. D., wife of the said party  
of the first part, of the second part, and G. H., of, &c., of the third  
part: Witnesseth, that the said party of the first part, in considera-  
tion of the sum of \$500, of lawful money of Canada, to him by the  
said party of the third part in hand well and truly paid at or before  
the sealing and delivery of these presents (the receipt whereof is  
hereby acknowledged), doth grant unto the said party of the third  
part, his heirs and assigns, All and singular that certain parcel or  
tract of land and premises situate, lying and being in the (*here de-  
scribe the lands*), Together with the appurtenances: To have and to  
hold the same lands, tenements and hereditaments, and all and  
singular other the premises hereby conveyed or intended so to be,  
with their and every of their appurtenances, unto the said party of  
the third part, his heirs and assigns, to the sole and only use of the  
said party of the third part, his heirs and assigns, forever. Subject,  
nevertheless, to the reservations, limitations, provisoes, and con-  
ditions expressed in the original grant thereof from the Crown.

And this Indenture further witnesseth, that the said party of the  
second part, with the privity and full approbation and consent of  
her said husband, testified by his being a party to these presents, in  
consideration of the premises, and also in consideration of the  
further sum of five shillings of lawful money of Canada aforesaid, to  
her by the said party of the third part in hand well and truly paid  
at or before the sealing and delivery of these presents (the receipt  
whereof is hereby acknowledged), hath granted and released, and by  
these presents doth grant and release, unto the said party of the  
third part, his heirs and assigns, all dower, and all right and title  
thereto, which she, the said party of the second part, now hath, or  
in the event of surviving her said husband might or would have in,  
to or out of the lands and premises hereby conveyed or intended so  
to be.

And the said party of the first part doth hereby, for himself, his  
heirs, executors and administrators, covenant, promise and agree  
with and to the said party of the third part, his heirs and assigns,  
in manner following, that is to say: That for and notwithstanding  
any act, deed, matter or thing by the said party of the first part done,  
executed, committed or knowingly or wilfully permitted or suffered  
to the contrary, he, the said party of the first part, now hath in him-  
self good right, full power and absolute authority to convey the said  
lands and other the premises hereby conveyed or intended so to be,  
with their and every of their appurtenances, unto the said party of  
the third part, in manner aforesaid, and according to the true intent  
of these presents: And that it shall be lawful for the said party of  
the third part, his heirs and assigns, from time to time, and at all  
times hereafter, peaceably and quietly to enter upon, have, hold,  
occupy, possess and enjoy the said lands and premises hereby con-

veyed, or intended so to be, with their and every of their appurtenances, and to have, receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him, the said party of the first part or his heirs, or any person claiming or to claim by, from, under or in trust for him, them or any of them: And that free and clear, and freely and absolutely acquitted, exonerated and forever discharged or otherwise by the said party of the first part, or his heirs, well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned or suffered by the said party of the first part, or his heirs, or by any person claiming or to claim by, from, under or in trust for him, them or any of them: And lastly, that he, the said party of the first part, his heirs, executors or administrators, and all and every other person whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said party of the third part, his heirs or assigns, make, do or execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better, more perfectly and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said party of the third part, his heirs and assigns, in manner aforesaid, as by the said party of the third part, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable, for the making or executing thereof, to go or travel from his usual place of abode.

In witness whereof, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of

E. F.

A. B. [L.S.]

C. D. [L.S.]

Received on the day of the date of the within Indenture, the sum of \$500 of lawful money of Canada, being the full consideration therein mentioned.

Signed in presence of  
E. F.

A. B.

*Ontario Short Form under Statute.*

This Indenture, made (in duplicate) the            day of            18   ,  
in pursuance of an Act respecting short forms of conveyances :

Between A. B., of, &c., of the first part, C. D., wife of the said party of the first part, of the second part, and E. F., of, &c., of the third part: Witnesseth, that in consideration of \$500 of lawful money of Canada now paid by the said party of the third part, to the said party of the first part (the receipt whereof is hereby by him acknowledged), He, the said party of the first part, doth grant unto the said party of the third part, his heirs and assigns for ever, All and singular that certain parcel or tract of land and premises situate, lying and being (*here describe the premises.*) To have and to hold unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use for ever. Subject nevertheless, to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown. The said party of the first part covenants with the said party of the third part, That he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part; And that the said party of the third part shall have quiet possession of the said lands free from all incumbrances; And that the said party of the first part will execute such further assurances of the said lands as may be requisite; and that he will produce the title deeds enumerated hereunder, and allow copies to be made of them at the expense of the said party of the third part; And that the said party of the first part has done no act to encumber the said lands. And the said party of the first part releases to the said party of the third part all his claims upon the said lands; And the said party of the second part, wife of the said party of the first part, hereby bars her dower in the said lands.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L. s.]

C. D. [L. s.]

Received on the day of the date of this Indenture from the said party of the third part, the sum of \$500 being the full consideration therein mentioned.

Witness,  
Y. Z.

A. B.

*Deed of Gift of Lands.*

This Indenture, made (in duplicate) the                      day of  
18   , Between A. B., of, &c., of the one part, and C. D. (the eldest  
son of the said A. B.) of the other part. Witnesseth, that the said  
A. B., in consideration of the natural love and affection which he  
hath and beareth unto the said C. D., Doth give and grant unto the  
said C. D., his heirs and assigns, All that parcel or tract of land,  
&c., [describing the premises], together with all and singular the  
appurtenances to the said parcel or tract of land and premises  
belonging or in any wise appertaining. To have and to hold the  
said parcel and tract of land, and all and singular other the  
premises hereby granted, unto and to the only proper use and  
behoof of the said C. D., his heirs and assigns, forever.

In witness whereof, the said parties to these presents have here-  
unto set their hands and seals, the day and year above written.

Signed, sealed and delivered

in the presence of

A. B. [L.S.]

Y. Z.

*Affidavit of Execution of Deed*

County of        } I, Y. Z., of, &c., [state here the name, in full, of  
To wit:        } the witness; his place of residence and occupation]  
make oath and say:—

1. That I was personally present and did see the within instru-  
ment and duplicate duly signed, sealed and executed by  
the parties thereto.
2. That the said instrument and duplicate were executed at
3. That I                      know the said parties.
4. That I am a subscribing witness to the said instrument and  
duplicate.

Sworn before me at  
in the county of  
this        day of

18   .

A Commissioner for taking Affidavits, etc.

*Deed of Right of Way.*

This Indenture made this day        of        18   , between A. B.,  
of, etc., and C. D., of, etc.

Witnesseth that the said A. B. for and in consideration of the  
sum of \$        lawful money of Canada to him in hand well and  
truly paid, the receipt whereof is hereby acknowledged, hath

granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said C. D., his heirs and assigns, the free and uninterrupted use, liberty and privilege of, and passage in and along, a certain alley or passage of        feet in breadth by        feet in depth, extending [*describe the passage*] together with free ingress, egress and regress to and for the said C. D., his heirs and assigns, and his and their tenants and under-tenants as by him or them shall seem necessary or convenient, at all times and seasons for ever hereafter, into, along, upon, and out of the said alley or passage, in common with him the said A. B., his heirs and assigns, and his and their tenants and under-tenants; to have and to hold all and singular the privileges aforesaid to him the said C. D., his heirs and assigns, to his and their only proper use and behoof, in common with him the said A. B., his heirs and assigns as aforesaid for ever. [*Add stipulations as to meeting expenses of paving, repairing, etc., alley, if thought necessary.*]

In witness whereof, etc.

Y. Z.

A. B. [L.S.]

#### *Release of Dower.*

This Indenture made (*in duplicate*) the        day of        one thousand eight hundred and eighty        , between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

Whereas, E. B., late of the        of        , in the county of        , in the Province of        by an Indenture dated the        day of        one thousand eight hundred and        for the consideration therein mentioned did grant and convey to the aforesaid C. D., therein described, his heirs and assigns, all that certain piece or parcel of land, situate, lying and being (*describe lands*.) And whereas the said E. B. departed this life on the        day of        one thousand eight hundred and        leaving his wife the party of the first part him surviving. And whereas the said party of the first part, the wife of the said E. B. did not join in the execution of the said Indenture, and at the request of the said party of the second part she hath agreed to execute these presents for the purpose of releasing her dower in the said lands and premises hereinbefore described.

Now this Indenture witnesseth, that the said party of the first part, in consideration of the premises and of the sum of        dollars of lawful money of Canada to her in hand well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth grant, release and quit claim unto the said party of the second part, his heirs and assigns, all dower and all right and title thereto which she the said party of the first part now hath in the said lands before mentioned, or can or may or could or might hereafter in anywise have or claim whether at

common law or otherwise howsoever in to or out of the lands and premises before mentioned and described. To have and to hold the same unto the said party of the second part, his heirs and assigns for ever.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of

A. B. [L.S.]

Y. Z.

---

*Deed of Quit Claim.*

This Indenture made (in duplicate) the            day of            in the year of our Lord one thousand eight hundred and eighty           , between A. B., of, etc., of the first part, and C. D., of, etc., of the second part. Witnesseth, that the said party of the first part for and in consideration of            of lawful money of Canada to him in hand paid by the said party of the second part at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) hath granted, released, and quitted claim, and by these presents doth grant, release, and quit claim unto the said party of the second part, his heirs and assigns for ever: all the estate, right, title, interest, claim and demand whatsoever, both at law and in equity, or otherwise, howsoever and whether in possession or expectancy of him the said party of the first part of into or out of all and singular that certain parcel or tract of land and premises situate, lying and being (*describe lands.*) Together with the appurtenances thereunto belonging or appertaining

To have and to hold the aforesaid lands and premises with all and singular the appurtenances thereto belonging and appertaining unto and to the use of the said party of the second part, his heirs and assigns for ever, subject nevertheless to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown

In witness whereof the said parties to these presents have hereunto set their hands and seals.

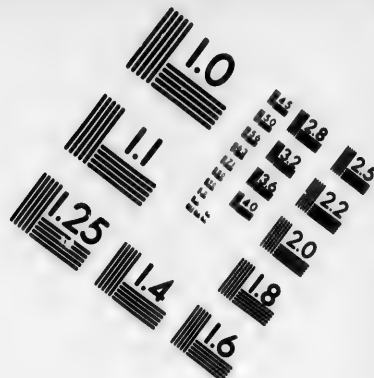
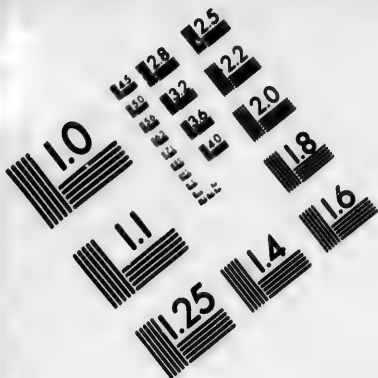
Signed, sealed and delivered  
in the presence of

A. B. [L.S.]

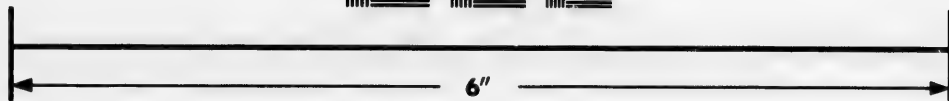
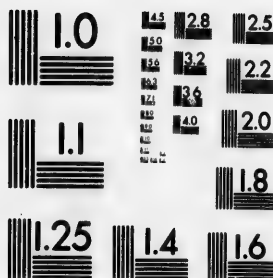
Y. Z.

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# IMAGE EVALUATION TEST TARGET (MT-3)



# Photographic Sciences Corporation

**23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503**

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## DITCHES AND WATERCOURSES.

## ONTARIO.

Throughout the Provinces of Canada the rights of land owners are, as a rule, governed by the English common law. But, in these Provinces, it was early recognized that the circumstances under which new districts must, to meet the demands of settlement, be quickly brought from a condition of unbroken forest to that of arable or farm land, are naturally different from those which exist where lands have been cleared, settled and cultivated for centuries. To render that law more suitable to a new country, certain alterations were consequently demanded, and such will be found to be generally made by statute wherever reasonably necessary. Thus, under the old law of England, a field or farm might imperatively require, for its proper cultivation, drainage through channels over the land of an adjoining owner, or of some other owner, whose consent to the construction of such drain would have to be secured, by purchase or otherwise. Should such owner refuse to accord it, no drainage could be effected, no matter how necessary to render his neighbour's field or farm cultivable. To remedy this state of the law, the legislatures of certain Provinces have framed statutes for the purpose of enabling such drainage to be carried out in a simple and inexpensive manner, with a just regard, as far as possible, to the rights of all parties interested.

The provisions of the law in Ontario are governed

by "The Ditches and Watercourses Act, 1883," and amendments, and are as follows:

Where lands, whether immediately adjoining or not, would be benefitted by the making of a ditch or drain, or by deepening or widening a ditch or drain already made in a natural watercourse, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water, or in order to enable the owners or occupiers of the lands the better to cultivate or use them, the respective owners shall open and make, deepen or widen such drain. Each must undertake a just and fair proportion of the work, according to the interest he may have in its construction. Even should one owner possess no interest whatever in the proposed drain to be made across his land, as in no way benefitting him, he yet cannot on that ground object to its construction, if beneficial to others; though, of course, he could not, in that case, be called upon to share the expense of it. And such ditches or drains, once opened, deepened or widened, must be kept up and maintained in the same proportion (according to interest) by the owners and their successors in the ownership of the lands, unless altered circumstances demand other arrangements.

The ditch or drain must be continued to a proper outlet, so that no lands, unless with the consent of the owner, shall be overflowed or flooded by reason of it. It is lawful to construct it through one, or any number of lots, until the proper outlet is reached.

An officer denominated an engineer is appointed by every Municipal Council; any person whom the Council deem competent may be appointed.

Where it is desired to have such ditch or drain as

the statute authorizes constructed, and the owners dispute as to the proportions in which the works should be performed by them, the course to be pursued is as follows: Any owner may serve upon the other owners or occupants of the lands to be affected a notice in writing signed by him in the form hereafter given marked B, or to the like effect, naming a day, hour and place convenient to such ditch or drain at which the parties are to meet, and, if possible, come to an agreement. Such notice must be served not less than six clear days before the time of meeting. If at the meeting an agreement is come to, it is reduced to writing according to form A, hereafter given, or to the like effect, and is signed by all the parties. It must then be filed, within four clear days of the signing, with the clerk of the municipality in which the land requiring the ditch or drain is situate. It may thereafter be enforced, if necessary, like an award of the engineer.

If no agreement is come to, any owner may file with the aforesaid clerk a requisition, shortly describing the ditch or drain, and naming the lands which will be affected by it, as well as the several owners, and requesting that the engineer shall attend at the time and place named in the requisition, which is made out according to form C, or to the like effect. The requisition must be filed with the clerk not less than six clear days before the day of meeting appointed therein. A notice (Form D, or to the like effect) must also be served upon all the persons named in the requisition, at least four clear days, to secure their attendance. Where such notice is served upon an occupant who is not the owner of the land he occupies, it is his duty immediately to notify the owner, failing in which he is

liable for all damages suffered by such owner by reason of his neglect.

It is the engineer's duty, upon receiving from the clerk a copy of the requisition, to attend at the time and place named therein and examine the premises. If he deems it proper, or if any of the parties request it, he may hear evidence of the parties or their witnesses on oath. He may also adjourn such examination and may require any other parties interested in the ditch or drain to attend, requiring the usual notice to be served upon them. If he concludes that the work is necessary, he is to make his award in writing, within thirty days from his receipt of the requisition, specifying clearly the locality, description and course of the drain, its points of commencement and termination, the portion of the work which each of the parties is to do, and the time in which it must be completed, the amount of his fees and other charges, and by whom these are to be paid. This award is in form E, or to the like effect, and is to be filed by the engineer with the clerk, who thereupon notifies each of the persons affected thereby of such filing. Any interested person affected by the award may, within fifteen days of its filing, appeal therefrom to the County Judge in the manner laid down in the Act. The municipality pays the engineer's fees, and also pays any other fees or costs awarded to any person; and, unless such be repaid by the person liable under the award, the whole amount is placed upon the collector's roll as a charge upon such person's lands in the same manner as municipal taxes. Provision is also made for the inspection of the work by the engineer after the time limited in his award for its completion; should he then find the same not completed in

accordance with the award, he may let the same in sections, after giving four clear days' notice in writing of his intention. The extra costs attending this proceeding, together with ten per cent. added, if not paid by the party liable, are placed in the collector's roll as before.

The drain may be continued into an adjoining municipality. No unauthorized person shall use a ditch or drain constructed under the Act, save pursuant to its provisions.

All notices under the provisions of the Act are to be served personally, or by leaving the same at the place of abode of the owner or occupant, with a grown up person residing thereat; and in case of non-residents (who are persons residing out of the municipality in which the lands are situate) then upon the agent of the owner, or by registered letter addressed to the said owner at the post-office nearest to his last known place of abode.

The fees of the engineer are fixed by the Council; the fees to witnesses and for the service of papers are the ordinary Division Court fees.

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## FORMS.

### A.

Whereas it is found necessary that a ditch or drain should be made (deepened or widened) on Lot No. \_\_\_\_\_ in the \_\_\_\_\_ concession of the Township of \_\_\_\_\_ and it is necessary to continue the same through lot number \_\_\_\_\_ in the \_\_\_\_\_ concession of the township of \_\_\_\_\_ (if more than one lot, describe them).

Therefore we owners of the land hereinafter described, do agree each with the other as follows:—

That I, owner of (describe lot) agree that I will make (deepen or widen) and maintain that part of such ditch or drain commencing at stake number one planted (describing the locality of said stake) and thence to stake number two, and that said portion of said ditch or drain shall be (describing depth and width) and I, owner of (giving the name of each person, the land owned by him, then the portion of work assigned, its depth, width, etc.), and each of us agrees to have our said respective portions completed on or before the day of A.D. 18  
 Dated, (Signed by the Parties.)  
 Witness, }

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B.

Township of

To

Sir,—As the owner of lot number in the concession of the Township of I require to construct a ditch or drain through said lot, and find it necessary to continue the same through your land, being lot number in the concession of the Township of under the Ditches and Watercourses Act, 1883, and request that you will attend at on the day of 18 at the hour of o'clock, in the noon, with the object of agreeing, if possible, upon the respective portions of such ditch or drain to be made, deepened or widened by the several parties interested.

Dated this day of 18  
 Yours, &c.

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C.

To

Clerk of the municipality of the

of Sir,—As the owner of lot number in the concession of the Township of I require to construct a ditch or drain through said lot, and it will be necessary to continue the ditch or drain through the following lands—on lot number in the concession of the Township of owned by Lot number in the concession of the Township of owned by (describe each lot through which the ditch or drain must be continued, and the name of the owner of each parcel), and having failed to agree upon the respective portions to be made by each, I (or we) require the engineer appointed by the municipality



for the purpose, to attend at the locality of said proposed ditch or drain on the            day of            18            at the hour of o'clock in the            noon, examine the premises, hear the parties and their witnesses, and make his award under the provisions of the Ditches and Watercourses Act, 1883.

Dated

(Signed by Party or Parties.)

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D.

To

Take notice that the engineer appointed by the municipality for the purpose will attend at lot number            in the            concession of            on            the            day of            A.D. 18            at the hour of            o'clock in the            noon, to examine the site of the proposed ditch or drain and make his award therein; and you as the owner of (*describe the lot*) which may be affected thereby, are requested to attend (with any witnesses you may desire to have heard) at said time and place.

Dated

Yours, &c.

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BRITISH COLUMBIA.

Under "The Drainage, Dyking and Irrigation Act, 1873," two thirds in interest of the proprietors of any marsh, swamp or meadow lands, may select one or more commissioners (who are officers appointed under the Act by the Lieut.-Governor) to carry on any work for reclaiming such lands by draining, dyking or irrigation. The commissioners may require the proprietors of such lands to furnish men, teams, tools and materials to build or repair any dykes or weirs necessary to prevent inundation, to dam, flow, irrigate, or drain such lands, or to secure the same from brooks, rivers, or the sea, by flood-gates or break-waters, or in any way they may think proper; and in case of neglect, the commissioners may perform the work at the expense of the proprietors.

The owners or occupiers are assessed for necessary expenses incurred, save where they have not agreed to the performance of the work, in which case the land alone is liable for the assessment.

The provisions of the "British Columbia Line Fences and Watercourses Act, 1876," as amended, are in great part identical with those of the Ontario Statute.

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## DIVISION COURTS.

## ONTARIO.

THESE COURTS have been established in every county in Ontario for the recovery of small debts. For the recovery of larger claims, the High Court of Justice and County Courts exist.

The number of Division Courts varies in different counties; but there must never be less than three nor more than twelve; and there must be at least one Court in every city or county town. They are presided over by the County Judge, or, in some large counties where Junior Judges have been appointed, by such Junior Judge; or by a deputy Judge; or, in Territorial Districts, by a Stipendiary Magistrate. In case of the illness or absence of a Judge, a barrister may be appointed to hold them. The authority of these Courts is derived from the Act, R. S. O. cap. 47, as amended by subsequent Acts. Courts are holden in each division once in every two months (or oftener, in the discretion of the Judge) at such times and places within the division as the Judge may appoint. Where, however, it appears inexpedient that they should be holden so often, they may be holden as the Lieut.-Governor appoints.

Division Courts may entertain and take cognizance of, and determine in a summary way,

1. All personal actions where the debt or damages claimed do not exceed sixty dollars.
2. All claims and demands of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the

amount or balance claimed does not exceed one hundred dollars.

3. All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars, and the amount, or original amount of the claim is ascertained by the signature of the defendant, or of the person whom, as executor or administrator, the defendant represents.

4. Claims combining

(a) A cause or causes of action in respect of which the jurisdiction of the Division Courts is, by the foregoing sub-sections of this section, limited to sixty dollars, which causes of action are hereinafter designated as class (a), and

(b) A cause or causes of action in respect of which the jurisdiction of the said Courts is, by the said sub-sections, limited to one hundred dollars, which causes of action are hereinafter designated as class (b),

May be tried and disposed of in one action, and the said Courts shall have jurisdiction so to try the same: provided, firstly, that the whole amount claimed in any such action in respect of class (a) shall not exceed sixty dollars; and that the whole amount claimed in any such action in respect of classes (a) and (b) combined, or in respect of class (b), where no claim is made in respect of class (a), shall not exceed one hundred dollars.

The finding of the Court upon the claims, when so joined as aforesaid, shall be separate.

These Courts have no jurisdiction in the following cases:

1. Actions for any gambling debt; or

2. For spirituous or malt liquors drunk in a tavern or ale-house ; or

3. On notes of hand given wholly or partly in consideration thereof ; or

4. Actions of ejectment, or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question : or

5. In which the validity of any devise, bequest or limitation under any will or settlement may be disputed ; or

6. For malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage ; or

7. Against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto.

Upon a contract for payment of a sum certain in labor or goods, or commodities, or anything other than money, the Judge, after the day has passed on which such goods or commodities ought to have been delivered, or the labor or other thing performed, may give judgment for the amount in money, as if the contract had been so originally expressed.

Minors (or persons under twenty-one years of age) may sue in a Division Court for wages not exceeding \$100.

A claim will not be allowed to be divided into two or more parts, so as to bring it within the jurisdiction of a Division Court ; nor can any sum greater than \$100 be recovered in an action for the balance of an unsettled account. Where the unsettled account in the whole exceeds \$400, no action can be brought in these Courts.

Ordinarily a suit must be entered and tried in the Court of the division where the cause of action arose, (that is, where the debt was contracted) or in that where the defendant or one of the defendants resides or carries on business; but a suit may also be entered in the Court nearest to the defendant's residence, irrespective of the place where the cause of action arose. By leave of the Judge before whom the action is to be tried, a suit may be entered at the Court of the division adjacent to that in which the defendants or one of them resides, if the Judge be satisfied on oath or by affidavit, that it will be more convenient for the parties.

Where the debt or money demand exceeds one hundred dollars, and is made payable by the contract of the parties at any place named therein, the action may be brought thereon in the Court holden for the division in which such place of payment is situate, subject, however, to the place of trial being changed to any other division in which the Court holden therein has jurisdiction in the particular case. An order may be obtained by the defendant for such change from the Judge of the County in which the action is brought, upon an application therefor made within eight days from the day on which the defendant who makes the application was served with the summons, on a ten days' service; or within twelve days after service, where the service is required to be fifteen or more days before the return.

Where the debt or money payable exceeds one hundred dollars, and is by the contract of the parties made payable out of Ontario, the action may be brought in any Division Court, subject to being changed by Judge's order as aforesaid. Upon consent of all parties, the trial may be had in any Division Court. Where, by

mistake or inadvertence, the action is entered in the wrong Court, it may be transferred to the right one by the Judge's order.

The first process in the Division Court is a *summons*. Summonses are of two kinds: *ordinary* and *special*. The former may be used in every case; the latter can only be used where the action is for a debt or money demand; and where the particulars of the plaintiff's claim are given with reasonable certainty and detail. There is also a *summons in replevin*, used in actions of that nature.

When a suit is to be entered at any Division Court, the first thing for the plaintiff to do is to hand to the clerk a written claim and particulars, which should show the names in full, and the present or last known place of abode of the parties. When the defendant's christian name is unknown, he may be described by his initials, or by such name as he is generally known by. The claim must, in every claim admitting thereof, show the particulars in detail; and in other cases must contain a statement of the particulars, or the facts constituting the claim, in ordinary and concise language, and the sum claimed in respect thereof. Where the plaintiff desires to sue the defendant in the Court nearest to his residence, he must add the following words to his claim, "and the plaintiff enters this suit and claims to have it tried and determined in this Court, because the place of sitting thereof is the nearest to the defendant's residence." If the plaintiff's claim is beyond the jurisdiction of the Court, he may abandon the excess; but he must do so in the first instance and on the claim.

When the defendants reside in the county, a special

summons is returnable on the eleventh day after service. Where they do not reside in the county, but one of them resides in an adjoining county, it is returnable on the sixteenth day; and where they all reside at other places, on the twenty-first day.

If a defendant served with a special summons disputes the plaintiff's claim, he must leave with the clerk of the Court a notice to that effect, within eight days after service, when the summons is returnable on the eleventh day; and within twelve days in other cases. If he does not do so, judgment will be entered by default on the return of the summons, and execution may be at once issued. The Judge, however, has a discretion to let a defendant dispute the claim at any time before judgment entered, although notice may not have been given; and he may set aside a judgment and permit the cause to be tried on sufficient grounds being shown. Judgment by default must be entered within one month after the return of a summons, and cannot be entered after. Where a special summons has been issued against several defendants, but all have not been served, the plaintiff may take judgment against those served: in which case his claim against the others will be lost. If he does not wish to abandon those not served, he must proceed in the ordinary way.

An ordinary summons, with a copy of the account, or of the particulars of the claim or demand, attached, requires to be served ten days at least before the Court day.

When the claim exceeds eight dollars, the service must be personal on the defendant; but where the amount does not exceed eight dollars, the service may be on the defendant, his wife or servant, or some grown



person being an inmate of the defendant's dwelling house, office or store.

The bailiffs of the Court serve and execute all summonses, orders, warrants, precepts and writs, and so soon as served return the same to the clerk of the Court of which they are bailiffs.

The clerk prepares the affidavit of service of summons, stating how served, the day of service, and the distance the bailiff necessarily travelled to effect service, which is annexed to or indorsed on the summons; but the Judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage.

In case of a debt or demand against two or more persons, partners in trade, or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues, his or their right to demand contribution from any other person jointly liable with him.

Whenever judgment has been obtained against any such partner, and the Judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served.

On the day named in the summons, the defendant must, in person, or by some person on his behalf, appear

in the Court to answer, and, on answer being made, the Judge in a summary way tries the cause and gives judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being non-suited. The Judge may also nonsuit in a jury case.

When a plaintiff is non-suited, he is at liberty to bring his case again into Court on a new summons; but if a judgment against him be given, he cannot. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and copy of the plaintiff's claim, may proceed to the trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon will be final and absolute, and as valid as if both parties had attended.

The Judge may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence; or for any other cause which the Judge thinks reasonable; upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet.

If the defendant desires to plead a tender, before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the clerk of the Court before which he is summoned to appear, at least six days before the day appointed for

the trial of the cause, and at the same time paying into Court the amount of the money mentioned in such plea.

Such sum is to be paid to the plaintiff, less one dollar, to be paid over to the defendant for his trouble, in case the plaintiff do not further prosecute his suit; and all proceedings in the action are to be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signifies to the clerk of the Court his intention to proceed for his demand, notwithstanding such plea; and in such case the action will proceed accordingly.

If such signification is given within the three days, but after the rising of the Court at which the summons is returnable, the case will be tried at the next sitting of the Court.

If the decision thereon be for the defendant, the plaintiff pays the defendant his costs, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the plea, or may be recovered from the plaintiff in the same manner as any other money payable by a judgment of the Court; but, if the decision be in favor of the plaintiff, the full amount of the money paid into Court will be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit.

The defendant may, at any time not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

The sum so paid in is to be paid to the plaintiff, and all proceedings in the action stayed, unless within three

days after the receipt of the notice the plaintiff shall signify to the clerk his intention to proceed for the remainder of the demand claimed ; in which case the action will proceed as if brought originally for such remainder only.

If the plaintiff recovers no further sum in the action than the sum paid into the Court, the plaintiff pays the defendant all costs incurred by him in the action after such payment, and such costs may be duly taxed, and recovered by the defendant by the same means as any other sum ordered to be paid by the Court.

When a defendant desires to put in a set-off, or to take advantage of the claim being outlawed, he must, at least six days before the trial, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode if within the division ; or, if living without the division, deliver the same to the clerk of the Court in which the action is to be tried ; and in case of a set-off, he must also deliver the particulars thereof to the clerk for the plaintiff.

No evidence of set-off can be given by the defendant, beyond that referred to in the particulars of set-off delivered.

If the defendant's demand, as proved, exceeds the plaintiff's, the plaintiff will be non-suited ; or if he so elects, the Court may give judgment for the defendant for the excess ; provided such excess be an amount within the jurisdiction of the Court ; if greater, a portion of it equal to the plaintiff's proved claim may be allowed the defendant to satisfy the plaintiff's claim, and the defendant may, if he choose, sue the plaintiff for the balance.

Any of the parties to a suit may obtain from the clerk

a subpoena with or without a clause for the production of books, papers and writings, requiring any witness resident within the Province, or served with the subpoena therein to attend Court; and the clerk, when requested, will give copies of such subpoena.

Any number of names may be inserted in the subpoena, and service thereof may be made by any person who can read and write; and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit sworn before any County Judge or the clerk of any Division Court, or before any person authorized to take affidavits in any of the Superior Courts; and proof of service may be received by the several Judges of the said Courts, either orally or by affidavit.

Every person served with a copy of a subpoena, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects, without sufficient cause, to obey the subpoena: and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, is liable to such fine not exceeding eight dollars, as the Judge may impose, and may by verbal or written order of the Judge, be in addition, imprisoned for any time not exceeding ten days; and such fine may be levied and collected with costs in the same manner as fines imposed on jurymen for non-attendance; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, will be applicable towards indemnifying the party injured by such refusal or neglect.

A witness resident in Ontario, but out of the County,

must obey a subpoena, provided the allowance for his expenses, according to the scale settled in the County Court, be tendered to him at the time of service.

A party may give evidence on his own behalf. Commissions may be issued to take the evidence of witnesses residing without the Province; or of witnesses about to leave the Province, or who otherwise through age, sickness or infirmity, are unable to attend the trial; or who reside at a great distance from the place of trial.

In any suit for a debt not exceeding twenty dollars, the Judge, on being satisfied of their general correctness, may receive the plaintiff's books as testimony; or in case of a defence of set-off or of payment, so far as the same extends to twenty dollars, may receive the defendant's books, and may also receive as testimony the affidavit of any party or witness in the suit resident without the limits of his county.

Where there is no *bona fide* defence to an action, but a dispute note is entered simply to delay the plaintiff's recovery, a motion may be made for immediate judgment. This relief is afforded under the amending Act of 1885; for the procedure in such cases, reference must be had to the sections of the Act itself.

All affidavits to be used in any Division Court may be sworn before the Judge, clerk or deputy clerk, or before any Judge, or commissioner for taking affidavits in any of the Superior Courts.

The Judge may openly in Court, and immediately after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision *instanter*, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the

clerk's office; and the clerk will then read the decision to the parties or their agents, if present, and forthwith enter the judgment.

The Judge may order the times and the proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day on which the summons was served; and, at the request of the party entitled thereto, he may order the same to be paid into Court; and the Judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings.

Except in cases where a new trial is granted, the issue of execution will not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same; but in case it at any time appears to the satisfaction of the Judge, by affidavit or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the Judge may stay judgment or execution for such time and on such terms as he thinks fit.

Where the sum in dispute on such appeal, exclusive of costs, exceeds one hundred dollars, there may be an appeal to the Court of Appeal, unless, before the Court opens, or without the intervention of the Judge before the commencement of the trial, there is filed with the clerk in any case, an agreement in writing signed by both parties, or their attorneys or agents, not to appeal. Upon the appeal, the evidence taken down in writing by the Judge is used. For ex-

tended statement of the rights of parties and procedure upon such appeals, reference must be had to "The Division Courts Act, 1880," and to sections 9 and 10 of "The Administration of Justice Act, 1884."

The Judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the Court, to be referred to arbitration to such persons, and in such manner, and on such terms, as he thinks reasonable and just.

Such reference cannot be revoked by either party, without the consent of the Judge.

The award of the arbitrator is to be entered as the judgment in the cause, and will be as binding and effectual as if given by the Judge.

The Judge, on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award; or may, with the consent of both parties, revoke the reference, and order another reference to be made in the manner aforesaid.

Any of such arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator.

The costs of any action or proceeding not otherwise provided for are to be paid by, or apportioned between, the parties in such manner as the Judge thinks fit; and in cases where the plaintiff does not appear in person or by some person in his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be



recovered as provided for in other cases under the Act; and in default of any special direction, the costs will abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court.

Any Bailiff or Clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same. A confession taken before suit, must show therein, or by statement annexed, the particulars of claim with the same fulness and certainty as in a special summons. Application for judgment on confession must be made within three months; otherwise execution will not issue without an affidavit that the debt remains due.

Either party may require a jury in actions for damages, not for breach of contract, or in replevin, where the sum or value of the goods sought to be recovered exceeds twenty dollars; and in all other actions where such amount exceeds twenty dollars.

In case the plaintiff requires a jury to be summoned to try the action, he must give notice thereof in writing to the clerk at the time of entering his claim, and at the same time pay to the clerk the proper fees for the expense of such jury; and in case the defendant requires a jury, he must, within five days after the day of service of the summons on him, give to the clerk, or leave at his office, the like notice in writing, and at the same time pay the proper fees as aforesaid; and thereupon, in either of such cases, a jury will be summoned.

Either of the parties to a cause is entitled to challenge jurors, as in other Courts.

Five jurors are empannelled and sworn to do justice between the parties whose cause they are required to

try, according to the best of their skill and ability, and to give a true verdict according to the evidence; the verdict of every jury must be unanimous.

The Judge may, if he thinks proper, have any disputed fact in a cause tried by a jury; and in any case, if the Judge is satisfied that a jury cannot agree, he may discharge them and adjourn the cause to the next Court: unless the parties consent to his pronouncing a judgment.

If there be cross judgments between the parties, the party only who has obtained judgment for the larger sum can have execution, and then only for the balance over the smaller judgment; and if both sums are equal, satisfaction will be entered upon both judgments.

In case the Judge makes an order for the payment of money, and in case of default of payment of the whole, or of any part thereof, the party in whose favor such order has been made may sue out execution against the goods and chattels of the party in default.

In case any person against whom a judgment has been entered up removes to another county without satisfying the judgment, the County Judge of the county to which such party has removed may, upon the production of a copy of the judgment duly certified by the Judge of the county in which the judgment has been entered, order an execution for the debt and costs awarded by the judgment to issue against such party.

If the party against whom an execution has been awarded pays or tenders to the clerk or bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, the debt and costs, or such part thereof as the plaintiff agrees to accept in full of his debt, together with the fees to

be levied, the execution will thereupon be superseded, and the goods be released and restored to such party.

The clerk, upon the application of any plaintiff or defendant (or his agent) having an unsatisfied judgment in his favor, will prepare a transcript of the entry of such judgment, and send the same to the clerk of any other Division Court in the same or any other county, with a certificate at the foot thereof signed by the clerk who gives the same, and sealed with the seal of the Court of which he is clerk, and addressed to the clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment and the date at which the same was recovered ; and the clerk to whom such certificate is addressed, on the receipt of such transcript and certificate, will enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate ; and all proceedings may then be taken for the enforcing and collecting the judgment in such last-mentioned Division Court by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court.

In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favor the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to such Division Court in that behalf.

In case an execution be returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of forty dollars, the plaintiff or defendant may

obtain a transcript of the judgment from the clerk, under his hand and sealed with the seal of the Court.

Upon filing such transcript in the office of the clerk of the County Court in the county where such judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, the same will become a judgment of such County Court; and the clerk of such County Court will file the same and make the proper entries in his book on payment of fifty cents.

Upon such filing and entry, the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof or of the balance due thereon as if the judgment had been originally obtained in the County Court.

In case any Bailiff employed to levy an execution against goods and chattels, by neglect, connivance, or omission, loses the opportunity of so doing, then upon complaint of the party aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the Court, the Judge may order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued; and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to satisfy the same, payment may be enforced by such means as are provided for enforcing judgments recovered in the Court.

Goods taken in execution are not to be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized.

In case the Judge is satisfied upon application on oath made to him by the party in whose favor a judg-

ment has been given, or by other testimony, that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such Judge may order an execution to issue at any time, as he thinks fit.

Any party having an unsatisfied judgment may procure from the Court wherein the judgment has been obtained, or from any Division Court within the limits of which the defendant dwells or carries on his business, a judgment summons; and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectations he then had, and as to the property and means he still has of discharging the said debt, damages, or liability, and as to the disposal he has made of any property.

If the party so summoned (1) does not attend as required by the summons, or allege a sufficient reason for not attending, or (2) if he attends and refuses to be sworn or to declare any of the things aforesaid; or (3) if he does not make answer touching the same to the satisfaction of the Judge; or (4) if it appears to the Judge, either by the examination of the party or by other evidence, that the party obtained credit from the plaintiff or incurred the debt or liability under false pretences, or by means of fraud or breach of trust, or that he wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or has made

or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them ; or (5) if it appears to the satisfaction of the Judge that the party had, when summoned, or since the judgment was obtained against him has had, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered, whether before or after the return of the summons, the Judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned is resident, for any period not exceeding forty days.

The Judge, before whom such summons is heard, may rescind or alter any order for payment previously made against any defendant so summoned before him ; and may make any further or other order, either for the payment of the whole of the debt or damages recovered, and costs, forthwith, or by any instalments, or in any other manner that he thinks reasonable and just.

In case the defendant has been personally served with the summons to appear, or personally appears at the trial, and judgment be given against him, the Judge at the trial may examine the defendant and the plaintiff, and any other person, touching the several things before mentioned, and may commit the defendant to prison, and make an order in like manner as in case the plaintiff had obtained a judgment summons.

No imprisonment under the Act will extinguish the debt, or protect the defendant from being summoned

anew and imprisoned for any new fraud or other default, or deprive the plaintiff of any right to take out execution.

We have stated in the foregoing pages the substance of the enactments of the Division Court Acts, so far as they apply to proceedings for the collection of an ordinary debt. We now proceed to notice the mode of action where the debtor has absconded or attempts to abscond.

If any person indebted in a sum not exceeding one hundred dollars, (or not exceeding two hundred dollars where the claim is for the recovery of a money demand not exceeding that amount, and the claim is ascertained by the signature of the defendant, or the person he, as executor or administrator, represents,) nor less than four dollars, for any debt or damages, or upon any judgment, (1) absconds from the Province, leaving personal property liable to seizure under execution for debt in any county in Ontario, or (2) attempts to remove such personal property either out of Ontario or from one county to another therein, or (3) keeps concealed in any county of Ontario to avoid service of process; any creditor on making an affidavit or affirmation in the form given at the end of this chapter, and filing the same with the clerk of any Division Court, can obtain a warrant, directed to the bailiff or to any constable of the county, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such county liable to seizure under execution for debt, or a sufficient portion thereof, to secure the sum mentioned in the warrant with the costs of the action.

Any County Judge, or a Justice of the Peace for the county, may take the affidavit and issue the warrant.

If the person against whom an attachment has issued, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in Court, a bond with good sureties, to be approved of by the Judge or clerk, in double the amount claimed, that the debtor will, in the event of the claim being proved and judgment recovered, pay the same, or the value of the property taken, to the claimant, or produce such property whenever required, the clerk may supersede the attachment, and the property attached will be restored.

If within one month from the seizure, the party against whom the attachment issued does not appear to give such bond, execution may issue as soon as judgment has been obtained, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof; or if the property has been previously sold as perishable, enough of the proceeds thereof may be applied to satisfy the judgment and costs.

If horses, cattle, sheep or other perishable goods have been taken upon an attachment, the bailiff of the Court may, at the request of the plaintiff, sell the same at public auction to the highest bidder.

Provision has also, in the Act, been made for the attachment of debts, the effect of which may be shortly stated as follows: If a debtor against whom a judgment has been obtained in the Division Court is himself a creditor of some third party, the judgment creditor, who is called the primary creditor, may obtain an order attaching the debt due by such third party to the judg-



ment debtor, who is called the primary debtor: and thereupon proceedings, called *garnishee proceedings*, may be taken to enforce payment by the third party to the primary creditor of the debt so due, or so much thereof as may be sufficient to satisfy the primary creditor's claim. The form of affidavit required will be found at the end of the chapter.

Besides the ordinary proceedings in a Division Court for the collection of a debt, proceedings may be taken to determine the right of property seized in execution. Such proceedings are termed *interpleader*. And if goods are illegally distrained for rent, or if goods are wrongfully detained from the owner, a *replevin summons* may be issued. Before the bailiff will replevy the goods, he will require a bond to produce the goods replevied if judgment is given against the party replevying, or to pay the value thereof, and to pay all costs. A jury may be required by either party in any *interpleader* issue.

Special provisions are made by the Act with reference to the Territorial Districts, and in the rules with reference to proceedings by and against executors and administrators, and other matters; but it would swell the limits of this work beyond due bounds if we were to notice them in detail: besides which it will always be found advisable to consult a professional man whenever the matter in dispute is at all out of the ordinary and common course.

We subjoin a few forms which will be found useful in the progress of a suit. They are the forms appended to the new Division Court rules.

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## FORMS.

*Undertaking by next friend of infant to be responsible for defendant's costs.*

In the                      Division Court in the County of  
 I, the undersigned E. F., being the next friend of A. B., who is  
 an infant, and who is desirous of entering a suit in this Court  
 against C. D., of, &c., hereby undertake to be responsible for the  
 costs of the said C. D., in such cause, and that if the said A. B.  
 fail to pay the said C. D. all such costs of such cause as the Court  
 shall direct him to pay to the said C. D., I will forthwith pay the  
 same to the clerk of the Court.

Dated this                      day of

18

(Signed)    E. F.

Witness

*Affidavit for leave to sue a party residing in an adjoining Division.*

In the                      Division Court in the County of  
 I, A. B., of                      , yeoman (or I, E. F., of                      , yeoman,  
 agent for A. B., of, &c.,) make oath and say—

1st. That I have a cause of action against C. D., of                      ,  
 yeoman, who resides in the                      Division of the County of  
 (if by agent, "That the said A. B. has a cause of action against  
 C. D., of                      , yeoman.")

2nd. That I (or the said A. B.) reside in the                      Division, in  
 the County of                     

3rd. That the distance from my residence (or from the said A.  
 B.'s residence) to the place where this Court is held is about  
 miles, and to the place where the Court is held in the                      Division  
 in the County of                      is about                      miles.

4th. That the distance from the said C. D.'s residence to the  
 place where the Court is held in the Division where he resides, is  
 about                      miles, and to the place where this Court is held about  
 miles.

5th. That the said Division and this Division adjoin each other,  
 and that it will be more easy and inexpensive for the parties to  
 have this cause tried in this Division than elsewhere.

Sworn, &c.

A. B. (or E. F.)

*Affidavit for leave to sue in a Division adjoining one in which  
debtors reside, where there are several.*

In the                      Division Court in the County of  
I, A. B., of                      , yeoman, make oath and say, (or E. F., of  
                    , yeoman, agent for A. B., of, &c., make oath and say):—

1st. That I have (or that the said A. B. has) a cause of action  
respectively against each of the debtors named in the first column  
of the Schedule on this affidavit indorsed.

2nd. That the columns in the said Schedule, numbered respec-  
tively 1st, 2nd, 3rd, 4th, 5th, 6th and 7th, are truly and correctly  
filled up, according to the best of my knowledge and belief.

3rd. That the Divisions named in the second and third columns  
of the said Schedule, opposite each debtor's name, respectively  
adjoin each other.

4th. That it will be more easy and inexpensive for the parties to  
have the said causes, respectively, tried in this Division, than else-  
where.

Sworn, &c.

A. B. (or E. F.)

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## SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

## C O L U M N S.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtors' names, place of residence and address.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where debtor resides.
John Doe, of Saline, in the County of Wentworth, yeoman.	Division No. 3 in the County of Lincoln.	Division No. 1 in the County of Wentworth.	22	1	5	17
Richard Roe, of Mono, County of Simcoe, Esquire.	Division No. 2 in the County of Simcoe.	Division No. 8.	23	11	13	4

A. B. (or E. F.)

*Affidavit for attachment.**(If made after suit commenced, insert style of Court and cause.)*

I, A. B., of the                      in the County of                     , (or I, E. F., of, &c., agent for the said A. B., of, &c.) make oath and say:—

1st. That C. D., of (or late of)                      in the County of                      is justly and truly indebted to me, (or to the said A. B.) in the sum of                      dollars and                      cents, on a promissory note for the payment of                      dollars and                      cents, made by the said C. D., payable to me (or the said A. B.) at a day now past;

Or for goods sold and delivered	} by me (or the said A. B.) to the said C. D.
Or for goods bargained and sold	
Or for crops bargained and sold	
Or for money lent	
Or for money paid for the said	

C. D.

Or for and in respect of my (or the said A. B.) having relinquished and given up to and in favor of the said C. D., at his request, the benefit and advantage of work done and materials found and provided and moneys expended by me (or the said A. B.) in and about the farming, sowing, cultivating and improving of certain land and premises;

Or for the use by the said C. D., by my permission (or by the permission of the said A. B.) of messuages and lands of me (or the said A. B.);

Or for the use by the said C. D. of pasture land of me (or the said A. B.) and the eatage of the grass and herbage thereon, by the permission of me (or the said A. B.);

Or for the wharfage and warehouse room of goods deposited, stowed and kept by me (or the said A. B.) in and upon a wharf, warehouse and premises of me (or the said A. B.) for the said C. D., at his request;

Or for horse-meat, stabling, care and attendance provided and bestowed by me (or the said A. B.) in feeding and keeping horses for the said C. D., at his request; or for work done and materials provided by me (or the said A. B.) for the said C. D., at his request;

Or for expenses necessarily incurred by me (or the said A. B.) in attending as a witness for the said C. D., at his request, to give evidence upon the trial of an action at law then depending in the Court, wherein the said C. D. was plaintiff, and one E. F. defendant;

Or for money received by the said C. D. for my use (or for the use of the said A. B.);

Or for money found to be due from the said C. D. to me, (or to the said A. B.) on an account stated between them, (or other cause of action, stating the same in ordinary and concise language.)

2nd. I further say that I have good reason to believe and do verily believe that \*the said C. D. hath absconded from that part of the Dominion of Canada, which heretofore constituted the Province of Canada, leaving personal property liable to seizure under execution for debt in the County of \_\_\_\_\_ in this Province.\*

(Or, instead of matter between the asterisks, the said C. D. hath attempted to remove his personal property, liable to seizure under execution for debt, out of this Province; or the said C. D. hath attempted to remove his personal property liable to seizure under execution for debt from the County of \_\_\_\_\_ to the County of \_\_\_\_\_, in this Province; or the said C. D. keeps concealed in the County of \_\_\_\_\_ in this Province to avoid service of process) with intent and design to defraud me (or the said A. B.) of my (or his) said debt.

3rd. That this affidavit is not made by me, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn, &c.

A. B.

### Replevin.

#### *Affidavit to obtain Judge's order for writ of replevin.*

In the \_\_\_\_\_ Division Court in the County of \_\_\_\_\_  
County of \_\_\_\_\_, to wit: I, A. B., of \_\_\_\_\_, make oath and say:

1st. That I am the owner of (*describe property fully*) at present in the possession of C. D.; or that I am entitled to the immediate possession of (*describe property*), as lessee, (bailee, or agent), of E. F., the owner thereof; or as trustee for E. F.) (*or as the case may be*), at present in the possession of C. D.

2nd. That the said goods, chattels, and personal property are of the value of \_\_\_\_\_ dollars, and not exceeding \$60.

3rd. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired, and that although the said goods, chattels and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.; or, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, the said C. D. fraudulently obtained possession of the said goods, chattels and personal property, by falsely representing that (*here state the false representation*), and now wrongfully withholds and detains the same from me; or, that the said goods, chattels and personal property were on the \_\_\_\_\_ day of \_\_\_\_\_ last, distrained or taken by the said C. D., under color of a distress for

rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F., (or as the case may be, setting out the facts of the wrongful taking or detention complained of with certainty and precision.)

4th. That the said C. D. resides (or carries on business at within the limits of the Division Court in the County of , (or that the said goods, chattels and personal property were distrained), (or taken and detained), (or detained) at within the limits of the Division Court of the County of

Sworn, &c.

A. B.

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*Affidavit to obtain writ without order in first instance.*

[The first four sections may be as above, and the following must be stated in addition:]

5th. That the said personal property was wrongfully taken, (or fraudulently got) out of my possession within two calendar months before the making of this affidavit, that is to say, on the day of last.

6th. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend, and do apprehend, that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property.

[Or if the property was distrained for rent, or damage feasant, then the statement given in the last specific alternative under the 3rd clause of the above form will be sufficient to obtain writ without order.]

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*Claim of Replevin.*

In the Division Court in the County of , A. B., of , states that C. D., of , did on or about the day of , A. D. 18 , take and unjustly detain (or detain, as the case may be), and still doth detain his goods, chattels and personal property, that is to say (here set out the description of property) which the said A. B. alleges to be of the value of dollars; whereby he hath sustained damages; and the said A. B. claims the said property with damages in this behalf as his just remedy.

A. B.

*Particulars in cases of contract.*

A. B., of \_\_\_\_\_, claims of C. D., of \_\_\_\_\_, the sum of \$ \_\_\_\_\_, the amount of the following account, viz., \_\_\_\_\_ (or the amount of the note, a copy of which is under written,) together with the interest thereon, [or, for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed] or, for that the said C. D. by deed under his seal dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, covenanted to, &c., and that the said C. D. hath broken said covenant whereby the said A. B. hath sustained damages to the amount aforesaid: or, for money agreed by the said C. D. to be paid by the said A. B., together with a horse of the said C. D., in exchange for a horse of the said A. B., delivered by the said A. B. to the said C. D.; or for that the said C. D., by warranting a horse to be then sound and quiet to ride, sold the said horse to the said A. B., yet the said horse was not then sound and quiet to ride; or for that the said C. D., in consideration that the said A. B. would supply E. F. with goods on credit, promised the said A. B., that he, the said C. D. would be answerable to the said A. B. for the same, that the said C. D. did accordingly supply the said E. F. with goods to the price of \$ \_\_\_\_\_ and upwards, on credit, that such credit has expired, yet neither the said E. F. nor the said C. D. has as yet paid for the said goods; or for that the said A. B. let to the said C. D. a house for seven years to hold from the day of \_\_\_\_\_, A. D. \_\_\_\_\_, at \$ \_\_\_\_\_ a year, payable quarterly, of which rent \_\_\_\_\_ quarters are due and unpaid.

(The above forms are given merely as examples of statements of causes of action, and the claim must show such further particulars as the facts of the case require.)

*Particulars in cases of tort.*

A. B. of \_\_\_\_\_, states that C. D. of \_\_\_\_\_, did, on or about the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at the Township of \_\_\_\_\_, unlawfully [take and convert one cow and one calf, the property of the said A. B.; or break and injure a waggon of the said A. B.; or falsely represent L. O. as fit to be trusted, the said C. D. at the said time knowing that the said L. O. was insolvent, whereby the said A. B. was induced to give him credit; or assault and beat the said A. B. (or as the case may be, stating the tort sued for in concise language);] The said A. B. hath sustained thereby damages to the amount of \_\_\_\_\_, and claims the same of the said C. D.

A. B.



*Landlord's claim for rent.*

Whereas, I have been informed that you have seized the goods of C. D., of \_\_\_\_\_, on his premises at \_\_\_\_\_, to satisfy a certain judgment of the \_\_\_\_\_ Division Court in \_\_\_\_\_, against the said C. D., at the suit of A. B.; I hereby give you notice that I am the landlord of the said premises, and that I claim \$ \_\_\_\_\_ for rent now in arrear, being for one quarter (or as the case may be,) and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment.

E. F.

Dated, &amp;c.

*Landlord of the said Tenement.*

To V. W.,

*Bailiff of*

&amp;c.

*Particulars of claim on Interpleader.*

In the

Division Court in the County of

BETWEEN A \_\_\_\_\_ B \_\_\_\_\_, Plaintiffs,

AND

C \_\_\_\_\_ D \_\_\_\_\_, Defendant.

E \_\_\_\_\_ F \_\_\_\_\_, Claimant.

To whom it may concern—

E. F., of \_\_\_\_\_, claims as his property the following goods and chattels (or moneys, &c.) seized and taken in execution, (or attached) as it is alleged, namely, (specify the goods and chattels, or chattels or moneys, &c., claimed) and the grounds of claim are (set forth in ordinary language the particulars on which the claim is grounded, as how acquired, from whom, when, and the consideration paid or to be paid, and when) and this the said E. F. will maintain and prove.

E. F.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

N. B.—If any action for the seizure has been commenced, state in what Court, and how the action stands.

*Application for Judgment Summons.*

To X. Y., Clerk of the Division Court in the County of .  
 Be pleased to summons , of, &c., to answer according to the  
 Statute in this behalf, touching the debt due me by the judgment of  
 the Court of the Division Court of the County of , on  
 my behalf, a minute whereof is hereunto annexed.

A. B., Plaintiff.

*Affidavit for order to garnish debt.*

In the Division Court in the County of  
 BETWEEN A ——— B ———, Plaintiff.

AND

C ——— D ———, Defendant.

I, A. B., of the of , in the County of , the  
 plaintiff in this suit, (if the affidavit be made by the plaintiff's attorney  
 or agent, make the necessary alteration) make oath and say, that judg-  
 ment was recovered in this case against the above named defendant  
 on the day of A. D. 18 , for the sum of \$ debt  
 and costs, (or according to the judgment,) and that the same remains  
 wholly unsatisfied, (or that \$ part thereof yet remains unsatis-  
 fied.)

That I have reason to believe, and do believe, that E. F., resid-  
 ing at within this Province is (or if the person indebted to the  
 Defendant be not known, say "that one or more persons residing in  
 this Province, whom I am unable to name, are") indebted to the  
 Defendant in the sum of \$ , (or if the amount be unknown, say  
 "in an amount which I am unable to name," for goods sold and  
 delivered by the Defendant to the said E. F., (or otherwise according  
 to the nature of the debt sought to be garnished.)

Sworn before me at the  
 of , in the County  
 of this day of ,  
 A. D. 18 . X. Y.,  
 Clerk.

A. B.

*Defendant's notice to the Plaintiff or Clerk.*

In the                      Division Court in the County of  
 BETWEEN A———B———, Plaintiff.  
 AND  
 C———D———, Defendant.

Take notice that I will admit, on the trial, the first, second and third items of the Plaintiff's particulars to be correct [or the signing and endorsement of the promissory note sued upon (or as the case may be)] or

Take notice that I dispute the claim of the Plaintiff in full (or here specify all or any of the grounds of defence.)

Dated the                      day of                      , A. D. 18                      .

Yours, &c.,  
 C. D.,  
 Defendant.

To the Plaintiff                      (or to the Clerk of the said Court.)

*The several grounds of defence may be stated as follows where they meet the circumstances.*

1. I dispute the following items of your claim, viz., (here specify the items), and admit the residue.

Or 2. I will on the trial claim a set-off against your demand, and the particulars thereof are hereunto annexed.

Or 3. I will on the trial insist that your claim is barred by the Statute of Limitations (or other statutory defence.)

Or 4. I will on the trial insist that I am discharged from payment of your claim by the provisions of the Insolvent Act.

Or 5. I will admit on the trial the 1st, 9th, 11th (or other) items of your particulars of account to be correct.

Or 6. I will admit on the trial the signing [or endorsement] of the promissory note [or bill of exchange] sued upon, (or as the case may be), and deny the residue of your claim.

Or 7. I will on the trial insist that you are not a duly certified Attorney or Solicitor.

Or 8. I will insist as a defence upon the trial that you have not given the proper notice of action before suit to which I am entitled as a Justice of the Peace (or Peace officer) under Rev. Stat. of Ont. cap. 73, or as a Bailiff of the Division Court under the 231 sec. of the Division Courts Act.

*Affirmation by Quakers, &c., and jurat thereto.*

(Court and style of cause.)

I, A. B., of \_\_\_\_\_, &c., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers (*or Menonists, Tunkers, Unitas Fratrum or Moravians, as the case may be*), and I do also solemnly, sincerely and truly declare and affirm as follows, that is to say (*state the facts.*)

Solemnly affirmed at \_\_\_\_\_  
 \_\_\_\_\_, in the County of \_\_\_\_\_  
 \_\_\_\_\_, on \_\_\_\_\_, before \_\_\_\_\_ A. B.

me.

X. Y., Clerk, &c.

*Or as the case may be.*

*Affidavit of Disbursements to several witnesses.*

In the \_\_\_\_\_ Division Court in the County of \_\_\_\_\_

BETWEEN A \_\_\_\_\_ B \_\_\_\_\_, Plaintiff,

AND

C \_\_\_\_\_ D \_\_\_\_\_, Defendant.

I, A. B., of \_\_\_\_\_, the above Plaintiff (*or C. D., the above Defendant, or E. F., agent for the above Plaintiff or Defendant*) make oath and say :

1st. That the several persons whose names are mentioned in the first column of the schedule at the foot hereof were necessary and material witnesses on my behalf (*or on behalf of the said Plaintiff or Defendant*) and attended at the sittings of this Court on the \_\_\_\_\_ day of \_\_\_\_\_ as witnesses on my behalf (*or on behalf of the said Defendant or Plaintiff*) and that they did not attend as witnesses in any other cause ; (*if otherwise, state the facts.*)

2nd. That the said witnesses necessarily travelled in going to the said Court, the number of miles respectively mentioned in figures in the second column of the said schedule opposite to the names of each of the said witnesses respectively.

3rd. That the several and respective sums of money mentioned in figures in the third column of the said schedule opposite to the names of the said witnesses respectively, have been paid by me (*or by the Plaintiff or Defendant*) to the said witnesses respectively as in the said schedule set forth for their attendance and travel as witnesses in this cause.

Sworn before me at \_\_\_\_\_

this \_\_\_\_\_

day of \_\_\_\_\_

A. B.

18 \_\_\_\_\_

X. Y.

Clerk.

*Schedule referred to in the foregoing Affidavit.*

Names of Witnesses.	Miles.	Sums paid.

*Affidavit for revival of Judgment.*

In the                      Division Court, in the County of  
 BETWEEN A——— B———, Plaintiff.  
 AND  
 C——— D———, Defendant.

I, A. B., of the                      of                     , in the County of                     , yeoman (if the affidavit be made by the Plaintiff's attorney or agent, with the necessary alteration), make oath and say as follows:

1st. On the                      day of                     , A. D. 18                     , I recovered a judgment of this Court against the above named Defendant for \$                     , debt, and \$                     , costs of suit.

2nd. No part of said moneys so recovered has been paid or satisfied, and the said judgment remains in full force (or "the sum of                     , part only of the said moneys has been paid, and the judgment remains in full force as to the residue of the said moneys so recovered thereby.")

3rd. I (or the said Plaintiff) am entitled to have execution of the said judgment, and to issue execution thereupon (for the sum of \$                     ) as I verily believe.

Sworn, &c.

## EXEMPTIONS FROM SEIZURE FOR DEBT.

The policy of exempting from seizure for debt certain goods and chattels of the debtor, and of permitting him to retain these notwithstanding the amount or number of the debts he may owe, is one generally recognized in all the Provinces. This policy is based upon the general belief that, were the creditor permitted by law to strip his debtor of all the simplest necessities of life, leaving the latter altogether dependent upon charity, no commensurate good would be accomplished, while the result would be prejudicial to the interests of the community at large, and even opposed to the commonest sentiments of humanity. Seizures are generally of two kinds: one under landlord's warrant of distress for overdue rent, and the other under warrant or writ of execution for judgment debts. Exemptions from seizure under the first class may be summed up as follows: (i) Things fixed to the freehold (even though the tenant may remove them), as kitchen ranges, coppers, grates, etc. (ii) Chattels not belonging to the tenant, but happening to be upon the premises to be attended to, repaired or worked up in the way of his trade, as a horse left with a blacksmith to be shod, a coat delivered to a tailor to be repaired, goods left with an auctioneer for sale, or with a wharfinger or warehouseman for safe keeping. (iii) Chattels actually at the time in use by some person, as the horse a man is riding, the coat he is wearing, etc. (iv) Goods belonging to guests at an inn. (v) Goods in custody of the law. (vi) Wild

anim. ls. (vii) Any perishable article, such as butcher's meat. The foregoing are absolutely privileged from seizure. Certain other chattels are said to be *conditionally* privileged, that is, they may not be seized if any other sufficient distress is found available on the premises. Such are, beasts of the plow, instruments of husbandry, and the implements or instruments of a man's trade or profession.

With regard to the second class, namely, seizures under writs of execution, the exemptions in the various Provinces are as follows :

#### ONTARIO.

The exemptions from seizure under execution, as set out in the Revised Statutes, cap. 66, are as follows ;

2. The following chattels are hereby declared exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever in this Province, namely :

1. The bed, bedding and bedsteads in ordinary use by the debtor and his family ;

2. The necessary and ordinary wearing apparel of the debtor and his family ;

3. One stove and pipes, and one crane and its appendages, and one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk-jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use ;

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars ;

5. One cow, four sheep, two hogs, and food therefor for thirty days ;

6. Tools and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of sixty dollars. 23 V. c. 25, s. 4 (1-6). See 23 V. c. 25, s. 3.

7. Bees reared and kept in hives to the extent of fifteen hives. 28 V. c. 8, s. 2. See Rev. Stat. c. 96, s. 2.

By "The Free Grant and Homesteads Act," R. S. O. cap. 24, the lands located under such free grants are exempt from seizure as follows :

**18.** No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs or devisees, before the issuing of the patent for such land.

**2.** After the issuing of the patent for any such land, and while such land or any part thereof, or any interest therein, is owned by the locatee or his widow, heirs or devisees, such land, part or interest, shall during the twenty years next after the date of such location be exempt from attachment, levy under execution, or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except any debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the patent. 31 V. c. 8, s. 14.

**19.** Nothing in this Act shall be construed to exempt any land from levy or sale for rates or taxes heretofore or hereafter legally imposed. 31 V. c. 8, s. 15.

#### NOVA SCOTIA.

The exemptions from seizure under execution, as set out in the Revised Statutes, cap. 104, sec. 40, are as follows :

**40.** The necessary wearing apparel and bedding of the debtor and his family, and the tools or instruments of his trade or calling, one stove, and his last cow, shall be exempted from execution.

#### NEW BRUNSWICK.

By the R. S. N. B., cap. 47, exemptions are as follows :—

The wearing apparel, bedding, kitchen utensils, and tools of his trade or calling, to the value of one hundred dollars, of any debtor, shall be exempt from levy or sale under execution.

The interest of the allottee in free grant lands, before the issue of the patent, can not be taken in execution.



## PRINCE EDWARD ISLAND.

By Revised Stat., 30 Vict., cap. 18, exemptions are as follows :—

The necessary wearing apparel and bedding of the debtor and his family, and the tools and instruments of his trade or calling, five pounds in money, and his last coat, are exempted from execution.

## MANITOBA.

The following personal and real estate are declared by statute exempt from seizure by virtue of all writs of execution issued by any Court in the Province, namely:

1. The bed, the bedding and bedsteads in the common use of the defendant and his family ;
2. The necessary and ordinary clothing of the defendant and his family ;
3. The necessary stoves, with their pipes, for the domestic use of the defendant and his family, a table, the necessary and ordinary kitchen utensils and table crockery belonging to the defendant and his family ; a spinning wheel, a weaver's loom, the books of a professional man, one axe, one saw, one gun, six traps, the nets and seines used by the defendant ;
4. The necessary food for the defendant's family during thirty days ;
5. Two cows, two oxen, two horses or mules, four sheep, two pigs, twelve fowls, and the food for the same for sixty days ;  
Provided, however, that such exemption as to horses shall apply only in case they are used by the owner in earning his living.
6. The tools and necessities used by the defendant in the practice of his trade or profession, to the value of one hundred dollars, if the defendant is a mechanic, but up to the value of two hundred dollars if the defendant is a farmer or a professional man ;
7. The articles and furniture necessary to the performance of religious services ;
8. The land cultivated by the defendant, provided the extent of the same be not more than one hundred and sixty acres ; in case it be more, the surplus may be sold, subject to any lien or encumbrances thereon ;
9. The house, stables, barns and fences on the defendant's farm, subject, however, as aforesaid.

The defendant is entitled to a choice from the greater quantity of the same kind of articles which are exempted from seizure.

## BRITISH COLUMBIA.

The following personal property is exempt from forced seizure or sale, by any process of law or in equity, or from any process in bankruptcy, that is to say:

The goods and chattels of any debtor or bankrupt, at the option of such debtor or bankrupt, or if dead, of his personal representative, to the value of five hundred dollars, the same not being homestead property under the provisions of the "Homestead Ordinance, 1867."

A homestead registered in pursuance of the provisions of cap. 77, R. S. B. C., is free from forced seizure or sale as aforesaid for or on account of any debt or liability incurred after such registration, provided it be of a value not greater than \$2,500; and if of greater value, the excess only is liable.

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## GUARANTIES.

A guaranty is a promise or agreement to answer or be responsible for the payment of some debt, or the performance of some duty of another person (who is in the first instance liable) should that person fail to pay such debt or perform such duty.

Guaranties must be in writing, that is, before they can be enforced in a Court of law the agreement itself, or some memorandum or note of it, must be in writing and signed by the party making it, or who is to be held responsible upon it, or by an agent lawfully authorized to sign it. A verbal guaranty is therefore worthless.

To constitute a concluded or perfect agreement of guaranty, it should be accepted by the party to whom it is offered, and his acceptance of it notified to the maker, and assented to by him. The amount guaranteed need not necessarily appear on the writing, although it is proper that the instrument be fully and carefully worded. Where given to or by a firm or partnership, any change in the firm by the addition or withdrawal of one or more partners renders it void, unless it be otherwise expressed or provided.

As a rule, it is best to mention in the written guaranty the *consideration* upon which it is given, though in Ontario this is, by statute, no longer necessary.

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FORMS.

*Guaranty for goods to be furnished.*

In consideration that A. B. will furnish dry goods and millinery to a value not exceeding one thousand dollars to C. D., of  
I hereby guarantee to him, the said A. B., that such goods to the value furnished (but not exceeding the said sum) will be paid for within the usual time by the said C. D., and if not by him, then by me. This guaranty to continue in force one year and no longer.

E. F.

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*Guaranty for a clerk.*

In consideration that the directors of the Union Bank do engage and receive into their employ A. B. as a clerk, I guarantee that he will well and faithfully and honestly serve them as such, duly accounting for all moneys, property and securities committed to his care as such clerk, and that I will reimburse them for any losses occurring through his misconduct or dishonesty.

E. F.

---

*Guaranty for a servant.*

To Mr. John Edwards, Burlington, Ont.:

Sir,—If you will engage Patrick Stevens as coachman, I guarantee to be responsible for any loss you may suffer by reason of any incompetency or neglect of duty of his in such employment during the space of six months.

SIMON STREET.

## LANDLORD AND TENANT.

The relation of landlord and tenant is that which subsists between the owner of houses or lands, and the person to whom he grants the use of them. It may be created by contract in writing, as a lease, or agreement for a lease; or by verbal agreement, as is usually the case in a letting from year to year. The owner, who is called the landlord or lessor, grants the possession and use of the property to the tenant or lessee for a specified time in consideration of the payment of a stipulated sum of money called rent.

A lease may be made for the life of either the landlord or the tenant; or it may be made for any number of years, or it may be *at will*,—that is, determinable at any moment at the will, properly signified, of either the lessor or lessee. An agreement for a lease must be in writing, and in Ontario and New Brunswick all leases exceeding three years in duration must be by deed, or the tenancy will be held in law a tenancy at will only; and if for more than seven years they must also be registered. A lease in writing, *not under seal*, for a term not exceeding three years in duration will in Ontario amount only to an *agreement* for a lease for the term specified. Leases in writing should be made in duplicate, one copy for each party; and it is prudent in all cases that the lease should be in writing; a written lease containing fully the terms agreed upon tends to prevent disputes and litigation.

A letting and hiring of land for a year or any less period may arise, by implication of law, from the relative situations of the parties and the silent language of their actions and conduct, as well as by express words and stipulations. Whenever the house or land of one man has been occupied and used by another, the presumption is that the use and occupation are to be paid for, and the landlord is entitled to maintain an action to recover a reasonable hire and reward for the use of the land, unless the tenant can show that he entered into possession of the property under circumstances fairly leading to an opposite conclusion. A landlord, on the other hand, who has permitted a tenant to occupy property, and has received rent from the latter for such use and occupation, will be bound by his own acts, and cannot afterwards treat such tenant as a trespasser, and turn him out of possession, without a proper notice to quit.

Leases may be made to commence from a day that is past, or from a day to come, as well as from the day of the making of the lease.

If a tenant holds over after the expiration of his lease, and the landlord receives from him rent which has accrued due subsequently to the expiration of the lease, he becomes a tenant from year to year upon the terms of the original demise.

A tenancy from year to year is ordinarily implied from the payment and the acceptance of rent; but this *prima facie* presumption may, of course, be rebutted by showing that the money was paid or received by mistake.

If an annual rent is reserved, the holding is from year to year, although the lease or agreement provides that

the tenant shall quit at a quarter's notice. Such a contract differs only from the usual letting from year to year in the agreement by the parties to reduce the ordinary six months' notice to quit to three months. But if it is expressly agreed that the tenant is always to be subject to quit at six months' notice, given him at any time, this constitutes a *half-yearly* tenancy, and the lessee will be presumed to hold from six months to six months, from the time that he entered as tenant. If he is to hold till one of the parties shall give to the other 'three months' notice to quit at the expiration of such notice, the tenancy will be a quarterly tenancy.

The landlord's remedy for the non-payment of rent is either by action or distress. Where the rent reserved is a fixed ascertained rent, the landlord may distrain. But if no certain ascertained rent has been reserved or covenanted or agreed to be paid, there is no right to distrain: the landlord can only recover a fair compensation for the use and occupation of the premises in an action at law. It is essential to the lawful exercise of the power of distress that the distrainor be the *immediate* landlord or owner of the estate. If after the making of the lease the landlord has sold and transferred his estate or interest to some third party, the former has no right or power to distrain. A landlord cannot distrain twice for the same rent, unless the distress has been withdrawn at the instance or request of the tenant, or unless there has been some mistake as to the value of the things taken.

When an annual rent is reserved, it may be made payable monthly or quarterly, or at any period of time that the parties may think fit to appoint, whatever may be the duration of the term of hiring. It may also be

made payable in advance, so as to entitle the landlord to distrain for it at the commencement, instead of at the end, of each quarter. There may be a yearly tenancy with an annual rent, payable quarterly; or there may be a quarterly tenancy with a quarterly rent, payable weekly or monthly; or at any successive periods of time.

A distress by the landlord after tender of the rent to him or to his bailiff or agent authorized to distrain, without a fresh demand on the tenant, is illegal; and if the landlord distrains before the rent has become due, the tenant may resist the entry and seizure by force, and, after a seizure has been made, he may rescue his goods at any time before they have been impounded; but when once the goods have been impounded they are in the custody of the law, and the tenant cannot then break pound and retake them. As soon as the bailiff or distrainor has made out and delivered to the tenant, or has left upon the premises, an inventory of the goods he has taken, they are said to be impounded.

Distress must be made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

The tenant has the whole day on which the rent becomes due to pay such rent; and a distress, therefore, cannot be made until the day after the day appointed for the payment of rent. Unless the rent is made payable at some particular *specified* place, the tenant is bound to seek out the landlord and pay or tender him the money. A landlord or his bailiff cannot lawfully break open gates or break down inclosures, or force open



the outer door of any dwelling-house or building, in order to make a distress ; but he may draw a staple or undo fastenings which are ordinarily opened from the outside of the house. A distress cannot be made in the night, or after sunset, or before sunrise, nor upon land which does not form part or parcel of the demised premises, and from which the rent reserved does not issue, unless the goods of the tenant have been removed therefrom the demised premises within sight of the distrainor coming to distrain, or unless they have been fraudulently removed thereto by the tenant to avoid distress. If the tenant fraudulently or clandestinely removes goods and chattels from the demised premises, to prevent the landlord from distraining them for rent in arrear, the landlord may, within thirty days after such removal, take and seize them wherever they may be found, unless they have in the meantime been sold *bona fide* to some person ignorant of the fraud. But if it be necessary to break open any door in order to seize such goods, the landlord must call a constable to his assistance, and must force the door in his presence and in the daytime. If it appears that rent was due at the time of such removal, and that the goods were taken away on or after the day the rent became due for the purpose of putting them out of the reach of a distress, the removal is fraudulent. It is not necessary that the rent should be in arrear and a right to distrain exist, at the time of the removal. Therefore, if the goods are removed on quarter-day, they may be followed, though the rent is not in arrear, and there is no right to distrain, until the day after. If there are sufficient goods on the demised premises, independently of the goods

removed, to satisfy the rent, the removal is not fraudulent, and the landlord cannot follow them.

Goods in the custody of a sheriff's officer or bailiff, having been seized under an execution or attachment, cannot be distrained; but before such goods can be removed the sheriff or bailiff must pay to the landlord one year's rent, or the rent for any less period that may happen to be due at such seizure. And in Ontario it is enacted that when goods are taken in execution under the process of any Division Court, the landlord shall be entitled by writing under his hand, or under the hand of his agent, stating the terms of holding, and the rent payable for the same, and delivered to the bailiff making the levy, to claim any rent in arrear then due to him not exceeding the rent of four weeks, where the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year.

Property of third parties on the demised premises, in the possession and use of the owners, and not in the possession or under the charge of the tenant, cannot be distrained for rent; nor can the goods and chattels of third parties placed upon the demised premises in the possession and under the care of the tenant for the purpose of repair or in the ordinary course of trade; nor the goods and chattels of travellers in hotels, in Ontario and other Provinces, or of lodgers in boarding houses. Fixtures, implements of trade and husbandry, and beasts of the plough are privileged from distress so long as they are in actual use, but not afterwards, or unless there are other goods on the demised premises sufficient

to satisfy the rent without them. Trade fixtures are always exempt, but all fixtures must be removed by the tenant before giving up possession, as, once out, he cannot re-enter to remove them.

It is not necessary, in order to make a distress for rent, that the landlord or his agent should take corporal possession of the things intended to be distrained. It is sufficient if the landlord in person, or by his agent or bailiff, enters upon the demised premises and announces the distress to the tenant or his servants, or to the persons in actual occupation of the property. When the landlord distrains by an agent or bailiff, he should give his agent authority in writing for the purpose. This authority is called a *Distress Warrant*.

As soon as the chattels are seized, whether by the landlord or his bailiff, an inventory of them should be made and served upon the tenant, together with the notice of the distress. The notice of the distress should set forth the amount of rent distrained for, and the particular things taken. If the tenant, after he has received notice, neglects for five days—to be computed inclusive of the last day and exclusive of the day of seizure—to pay the rent or replevy the goods, the landlord may sell them for the best price that can be got for them, and apply the purchase money in discharge of the rent and the costs of the distress and sale, paying the overplus, if any, to the tenant.

The costs of distresses are, in some of the Provinces, regulated by statute, and in Ontario, with respect to distresses under eighty dollars are as follows :

Levying Distress.....	\$1 00
Man keeping possession, per diem.....	75
Appraisement, whether by one appraiser or more, two cents in the dollar on the value of the goods	

If any printed advertisement, not to exceed in all..... 1 00  
Catalogues, sale, and commission, and delivery of goods, five  
cents in the dollar on the net produce of the sale.

Every bailiff or other person who makes any distress is bound to give a copy of his charges, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels any distress shall have been levied, although the rent demanded may exceed the sum of eighty dollars. When the rent distrained for exceeds eighty dollars, the costs are not, in Ontario, limited to any particular amount or fixed scale of charge; but they must be fair and reasonable.

When, in consequence of the rent not being *fixed* and *ascertained*, the landlord has no right to distrain, his only remedy is by action at law, in which he can recover from the tenant a proper compensation for the use and occupation of the premises.

With regard to repairs, it may be remarked generally, that in the absence of an express covenant or agreement to repair, there results from the demise and acceptance of the lease by the tenant an implied covenant or promise to use the property demised in a tenantlike and proper manner; to take reasonable care of it, and restore it, at the expiration of the term for which it is hired, in the same state and condition as it was in when demised, subject only to the deterioration produced by ordinary wear and tear, and the reasonable use of it for the purpose for which it was known to be required. A landlord is not bound to repair, unless by special agreement. Where a tenant covenants unconditionally to repair, he must restore the premises even though they should be damaged, or even consumed, by fire. Hence the risk of an unqualified covenant to this effect

on the tenant's part, for the latter would be not only bound to rebuild, but would be liable for the rent meanwhile.

When a lease is determinable on a certain event or at a particular period, no notice to quit is necessary, because both parties are equally apprized of the determination of the term. If, therefore, a lease be granted for a term of years, or for one year only, no notice to quit is necessary at the end of the term. In the case of a tenancy at will, no notice to quit is necessary, but there must be a formal demand of possession, or notice of the determination of the will, on the part of the landlord, before any action of ejectment can be brought. The tenant at will, too, in order to discharge himself from his liability for rent, or for a reasonable compensation for use and occupation, must give notice to the landlord of the fact of his abandonment of the possession, and of his election to rescind the contract and put an end to the tenancy. If the holding is a general holding for a year, and onwards from year to year so long as both parties please, a half-year's notice must be given by one party or the other in order to determine the yearly hiring and tenancy; and this notice may be given in the first as well as any subsequent year of the tenancy. The notice may be in writing or by word of mouth, but it is best to have it in writing and signed by the party serving it; a copy should be preserved, endorsed with a memorandum of the date and mode of service. In the case of a yearly tenancy, it must be a full six month's notice, to expire at that period of the year corresponding with the period at which the tenancy commenced.

It is better that a written notice to quit should be served upon the landlord or tenant (as the case may be) personally ; but it is sufficient if served upon the wife or servant at the dwelling-house of the party to be served.

Where a furnished house is let, there is an implied agreement that it is reasonably fit for habitation at the time let, and the tenant may vacate it upon his discovery that it is not. But in the case of an unfurnished house, the fact that the premises are in an unsanitary state by reason of imperfect drains, cesspools, etc., will not justify the tenant in refusing to pay rent ; though if the landlord have specially represented the premises habitable and healthy, he may be liable to the tenant in an action for damages for injuries suffered. If defects are suspected by the tenant, he should, before entering into possession, obtain the landlord's written agreement to put the house in repair.

A tenant may underlet, or assign his lease, unless forbidden by the lease ; but he will remain liable to the landlord for rent and upon his covenants unless he be discharged therefrom in writing signed by his landlord.

At the expiry of the term of lease, the tenant should give up possession. Should he refuse, the landlord has no right to gain possession by putting the tenant out by force, though, where the premises are vacated by the tenant, though locked up, the landlord may break in to regain possession. Where the tenant refuses to give up possession, the landlord's only remedy is by action of ejectment, save in those Provinces where, as in Ontario, New Brunswick and Manitoba, a summary remedy is provided by statute, under order of a Judge or Justices.

## LODGERS.

The rules of law as to lodgers are in the main similar to those respecting other lessees. The letting of apartments generally includes the right to use the door-bell or knocker, entry, w. c., etc. In the Provinces of Ontario and Manitoba, lodgers' goods are protected from seizure for rent due the superior landlord.

## MANITOBA.

The costs of distraining are fixed by statute as follows:—

1. Levying distress, \$1.
2. Man in possession, per day, \$1.50.
3. Appraisalment, whether by one appraiser or more, two cents in the dollar on the value of the goods up to \$1,000, and one cent in the dollar for each additional \$1,000 or portion thereof.
4. All reasonable and necessary disbursements for advertising.
5. Catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to \$1,000, and two and one half per cent. thereafter.

No other or more costs or charges may be taken from the proceeds of the goods, or from the tenant whose goods are seized. No charge shall be made except for what is actually done. Any violation of this provision is visited on the offender in treble the amount of the overcharge. The same tariff applies to goods seized under chattel mortgage.

Where a distress is made, a copy of the demand and of all costs and charges of the distress, signed by the person making the distress, must be given the person on whose goods the distress is levied.

Where the goods of boarders or lodgers are seized, the boarders or lodgers may serve a statutory declaration on the landlord, stating their claim and the amount of rent they then owe, and on payment up to such amount, they may release the goods.

Overholding tenants may be proceeded against under an Act similar in its terms to that in force in Ontario.

## BRITISH COLUMBIA.

The costs of levying distress are fixed by 42 Vict. cap. 11, as follows:

Levying distress under \$100.....	\$1 50
" " over 100 and under 300 .....	1 75
" " over 300.....	2 00
Man keeping possession per diem ..	2 00
Appraisement, whether by one appraiser, or more, 2 cents in the dollar on value of the goods.	
Catalogue, sale and commission, and delivery of goods:—On the net produce of the sale, if under \$100—ten cents in the dollar; if over \$100 and under \$300—eight cents; and if over \$300—six cents.	

A copy of the distress must be served, and the penalty for overcharge is the same as provided in Manitoba.

## FORMS.

*Lease of House.*

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, between A. B., of, &c., of the first part, and C. D., of, &c., of the second part, Witnesseth, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said party of the second part, his executors, administrators and assigns, to be paid, observed and performed, he, the said party of the first part, hath demised and leased, and by these presents doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, all that messuage or tenement situate, lying and being, &c., (*here describe the premises*) together with all houses, out-houses, yards and other appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto: to have and to hold the same for and during the term of \_\_\_\_\_ years, to be computed from the \_\_\_\_\_ day of \_\_\_\_\_



r8 , and from thenceforth next ensuing, and fully to be completed and ended.

Yielding and paying therefor yearly and every year during the said term hereby granted unto the said party of the first part, his heirs, executors, administrators or assigns, the sum of \$ , to be payable quarterly on the following days and times, that is to say, (*here state the days of payment*) the first of such payments to become due and be made on the day of next.

Provided always, and these presents are upon this express condition, that if the said yearly rent, hereby reserved, or any part thereof, shall at any time remain behind or unpaid for the space of twenty-one days next over or after any of the days on which the same shall become due and payable, then, and in every such case, it shall be lawful for the said party of the first part, his heirs, executors, administrators, or assigns, into and upon the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess and enjoy, as if these presents had never been executed.

And the said party of the second part, for himself, his heirs, executors, administrators and assigns, doth hereby covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, in manner following, that is to say:

That he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his heirs, executors, administrators, or assigns, the said yearly rent hereby reserved at the times and in manner hereinbefore appointed for payment thereof.

And also shall and will, from time to time, and at all times during the said term, keep in good and sufficient repair the said premises hereby demised (reasonable wear and tear and accident by fire excepted), and the same so kept in repair shall and will, at the end, expiration or other sooner determination of the said term, peaceably and quietly yield and deliver up to the said party of the first part, his heirs, executors, administrators or assigns.

And also shall and will well and truly pay, or cause to be paid, all taxes, rates, levies, duties, charges, assessments and impositions whatsoever, whether parliamentary, local, or otherwise, which now are, or which during the continuance of this demise shall at any time be rated, taxed or imposed on, or in respect of the said demised premises, or any part thereof.

And also that it shall be lawful for the said party of the first part, his heirs, executors, administrators and assigns, and their agents respectively, either alone or with workmen or others, from time to time at all reasonable times in the daytime, during the said term, to enter upon the said demised premises, and every part thereof, to view and examine the state and condition thereof; and in case any want of reparation or amendment be found on any such examination, the said party of the second part, his executors, administrators or

assigns, shall and will from time to time cause the same to be well and sufficiently repaired, amended, and made good, within one month next after notice in writing shall have been given to them or left at or upon the said demised premises for that purpose. And if the said party of the second part, his executors, administrators or assigns, fail in making the necessary repairs in manner hereinbefore described, that it shall be lawful for the said party of the first part, his heirs, executors, administrators and assigns, and their agents, to enter into and upon the said hereby demised premises, and have the same repaired in a proper manner, and to render the account for such repairs to the said party of the second part, his executors, administrators and assigns, and demand payment for the same, and if default is made, to sue for the same in any Court of Law having jurisdiction over the same.

And the said party of the second part, his executors, administrators or assigns, shall not, nor will at any time or times during the continuance of this demise, sell, assign, let or otherwise part with this present lease, or the said premises hereby demised, or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, nor alter, change or remove any part of the said premises, yards or offices, externally or internally, without the license and consent in writing of the said party of the first part, his heirs, executors, administrators and assigns, from time to time first had and obtained.

And the said party of the first part, for himself, his heirs, executors and administrators or assigns, covenants with the said party of the second part, his executors, administrators and assigns, that he, the said party of the second part, his executors, administrators and assigns, well and truly paying the rent hereinbefore reserved, and observing, performing and keeping the covenants hereinbefore contained, shall and may, from time to time, and at all times during the said term, peaceably and quietly enjoy the said premises hereby demised, without molestation or hindrance.

In witness whereof, the said parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]  
C. D. [L.S.]

#### *Lease of Land.*

This Indenture, made the       day of       , 18       , between A. B., of, &c., of the first part, and C. D., of, &c., of the second part, Witnesseth, that in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and to be paid, observed and performed by the said party of the second part, his executors, administrators and assigns, He, the said party of the first part,

Hath demised and leased, and by these presents Doth demise and lease, unto the said party of the second part, his executors, administrators and assigns, All that certain parcel or tract of land and premises situate, lying and being (*here describe the lands*). To have and to hold the said parcel or tract of land, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the            day of           , 18           , for the term of           , from thence next ensuing, and fully to be complete and ended, Yielding and paying therefor, unto the said party of the first part, his executors, administrators and assigns, the yearly rent or sum of \$           , of lawful money of Canada, by equal yearly payments, on the            day of           , in each and every year during the said term, the first payment to be made on the            day of           , next ensuing the date hereof. (*The times of payment may be quarterly or half-yearly, if desired.*)

And the said party of the second part, doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said party of the first part, his executors, administrators and assigns, that he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his executors, administrators or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout for or in respect of any rates, taxes, assessments, or otherwise: And also shall and will, on or before the            day of           , now next, at his own costs and charges, fence in the premises hereby demised in a good and substantial manner, (*add here such covenants as to the mode of cultivation, &c., as may be agreed on.*)

And it is hereby agreed, on the part of the said party of the first part, his heirs, executors, administrators and assigns, that if at any time within the said term of            the said party of the second part, his heirs, executors, administrators or assigns, shall desire to purchase the fee simple of the land hereby demised, he shall be allowed to do so by paying the sum of \$           , of lawful money aforesaid, provided the same rent shall have been regularly paid up to the time when he may so desire to purchase; and provided he gives to the party of the first part, three months previous notice of his intention to purchase.

And it is hereby agreed, on the part of the said party of the second part, his executors, administrators and assigns, that if at any time or times during the said term, the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid, as aforesaid, then it shall be lawful for the said party of the first part, his heirs, executors, administrators or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the same to sell and dispose of, either by public auction or private sale, as to him or them may

C. D. [L.S.]

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, Between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, Witnesseth, that for and in consideration of the rents, covenants, conditions and agreements hereinafter reserved and contained, and which, on the part and behalf of the said C. D., his executors, administrators and assigns, are or ought to be paid, done and performed, the said A. B. hath demised, leased, set and to farm let, and by these presents doth demise, lease, set and to farm let, unto the said C. D., his executors and administrators, All that parcel or tract of land, &c., (*describing the lot*) together with the frame dwelling house, barns, stables, and other out-houses thereupon erected, standing and being, together with all ways, paths, passages, waters, watercourses, privileges, advantages, and appurtenances whatsoever, to the same premises belonging, or in any wise appertaining. To have and to hold the said parcel or tract of land, dwelling-house, buildings and premises hereby demised unto the said C. D., his executors, administrators and assigns, from the day of the date of these presents, for, and during, and until the full end and term of \_\_\_\_\_ years from thence next ensuing, and fully to be complete and ended: Yielding and paying therefor yearly, and every year during the said term hereby granted, unto the said A. B., his heirs and assigns, the yearly rent or sum of \$ \_\_\_\_\_, of lawful current money of Canada by two equal half-yearly payments, to be made on the \_\_\_\_\_ day of \_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_.

in each and every year during the said term, without any deduction or abatement thereof for or upon any account or pretence whatsoever. Provided always, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid for the space of twenty-one days next over or after either of the said days hereinbefore mentioned and appointed for payment of the same (being lawfully demanded) or if the said C. D., his executors or administrators, shall assign over, underlet, or otherwise depart with this indenture, or the premises hereby leased, or any part thereof, to any person or persons whomsoever, without the consent of the said A. B., his heirs or assigns, first had and obtained in writing, under his or their hands, for that purpose; then, and in either of the said cases, it shall and may be lawful to and for the said A. B., his heirs or assigns, into the said premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again, retain, re-possess and enjoy, as in his and their first and former estate or estates, anything herein contained to the contrary thereof in any wise, notwithstanding. And the said C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise and agree to and with the said A. B., his heirs and assigns, in manner following, that is to say: That he, the said C. D., his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, the said yearly rent of \$ , by equal half-yearly payments, on or at the days or times and in the manner hereinbefore mentioned and appointed for payment thereof. Also that he, the said C. D., his executors, administrators and assigns, shall and will, at his and their own costs and charges, well and sufficiently repair and keep repaired the dwelling-house, buildings, fences and gates now erected, or which shall at any time or times hereafter during the said term be erected, upon the said demised premises, he, the said A. B., his heirs and assigns, upon request and notice to them made, finding and allowing on the said premises, or within        miles distance thereof, all rough timber, brick, lime, tiles, and all other materials whatsoever (except straw), for doing thereof, to be carried to the said hereby demised premises at the charge of the said C. D., his executors, administrators or assigns, or otherwise permitting and allowing him or them, at their like costs and charges, to cut and fell such and so many timber-trees upon some part of the premises hereby demised as shall be requisite and necessary for the purpose (damage happening by accidental fire, tempest, or other inevitable accident being always excepted): And further, that he, the said C. D., his executors, administrators and assigns, shall and will at all times during the said term cultivate and farm such part or parts of the said lands and premises as now are or shall hereafter be brought into cultivation during the said term in a proper husbandlike manner. And shall and will at the expiration or other sooner determination of this lease peaceably and quietly leave, surrender and yield up unto

the said A. B., his heirs and assigns, the whole of the said premises hereby demised in such good and sufficient repair as aforesaid, (reasonable use and wear thereof, and damage by accidental fire, tempest or other inevitable accident, as aforesaid, always excepted): And also, that it shall and may be lawful to and for the said A. B., his heirs and assigns, after six days' previous notice in writing, twice or oftener in every year during the said term, at seasonable and convenient times in the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of reparation and amendment which shall then and there be found, to leave notice in writing at the said demised premises to or for the said C. D., his executors, administrators or assigns, to repair and amend the same within the space of three calendar months. And the said C. D., doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators or assigns, shall and will within three calendar months next after every and any such notice shall have been so given or left as aforesaid, well and sufficiently repair and amend the same accordingly (except as above excepted, and upon being provided or allowed materials for the same, as aforesaid), and also that he, the said C. D., his executors, administrators or assigns, shall not, nor will at any time during the said term, pull down, or cause or permit to be pulled down, or make, or cause or permit to be made, any alteration by cutting new door-ways or otherwise in the said dwelling-house, or in any of the buildings upon the said demised premises, without the consent in writing of the said A. B., his heirs or assigns, for that purpose first had and obtained; And moreover shall not, nor will at any time during the continuance of this demise, bargain, sell assign, transfer or set over this Indenture of Lease, or let, set, demise, underlease, or underlet the said dwelling-house and premises hereby demised, or any part thereof, or in any other manner part with this Indenture of Lease, or the possession or occupation of the premises hereby demised, without such license and consent as aforesaid. Provided always, nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of \_\_\_\_\_, hereby reserved, or any part thereof, shall be unpaid in part or in all by the space of twenty-one days next after either of the days on which the same ought to be paid as aforesaid, being lawfully demanded; or in case the said C. D., his executors or administrators, shall at any time during the said term hereby granted, without such license as aforesaid, assign, transfer, or set over, underlease or underlet, the premises hereby demised, or any part thereof, or in any other manner part with the possession or occupation of the same, or any part thereof; or if all or any of the covenants, conditions or agreements in these presents contained, on the part and behalf of the said C. D., his executors, administrators and assigns, shall not be performed, fulfilled, and

kept according to the true intent and meaning of these presents, then and from thenceforth, in any or either of the said cases, it shall and may be lawful to and for the said A. B., his heirs and assigns, into and upon the said demised premises, or any part thereof, to the name of the whole, wholly to re-enter and the same to have again, retain, re-possess and enjoy as in his or their first and former estate, and thereout and from thence the said C. D., his executors, administrators and assigns, and all other occupiers of the said premises, to expel, put out and amove, this indenture or anything hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said A. . doth hereby, for himself, his heirs, executors, administrators and assigns, covenant, promise and agree with and to the said C. D., his executors, administrators or assigns, that he, the said C. D., his executors, administrators or assigns, well and truly paying the said yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and observing, keeping and performing all and singular the covenants and agreements in these presents contained, and which, on his and their parts and behalves, are and ought to be paid, kept, done and performed, shall and may lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised premises, and every part and parcel thereof, with the appurtenances, during all the said term of \_\_\_\_\_ years hereby granted, without any lawful let, suit, trouble, interruption, eviction, molestation, hindrance or denial of or by him, the said A. B., his heirs or assigns, or of, from or by any other person or persons claiming or to claim from, by or under him, them, or any or either of them.

In witness whereof, the said parties to these presents have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of

Y Z.

A. B. [L.S.]

C. D. [L.S.]

#### Ontario Statutory Lease.

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, in pursuance of the Act respecting short forms of leases: Between A. B., of, &c., (hereinafter called the lessor), of the first part; and C. D., of, &c., (hereinafter called the lessee), of the second part; Witnesseth, that in consideration of the yearly rent, covenants and conditions hereinafter respectively reserved and contained by the said lessee, his executors, administrators and assigns, to be respectively paid, observed and performed, He, the said lessor, Hath demised and leased, and by these presents, Doth demise and lease unto the said lessee, All that messuage and tenement situate, (or all that parcel or tract of land situate) lying and being (*here insert a description of the*



*premises with sufficient certainty*): To have and to hold the said demised premises, for and during the term of \_\_\_\_\_ years, to be computed from the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and from thenceforth next ensuing, and fully to be complete and ended: Yielding and paying therefor, yearly and every year during the said term hereby granted unto the said party of the first part, his heirs, executors, administrators or assigns, the sum of \$ \_\_\_\_\_, to be payable on the following days and times, that is to say: on, &c., (*state here the days of payment.*) The first of such payments to become due and be made on the \_\_\_\_\_ day of \_\_\_\_\_, next. That the said (*lessee*) covenants with the said (*lessor*), To pay rent, and to pay taxes, and to repair; and to keep up fences, and not to cut down timber, and that the said (*lessor*) may enter and view the state of repair; and that the said (*lessee*) will repair according to notice; and will not assign or sub-let without leave; and that he will leave the premises in good repair. Proviso for re-entry by the said (*lessor*) on non-payment of rent, or non-performance of covenants; The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.S.]  
C. D. [L.S.]

#### *Distress Warrant.*

To Mr. A. B., my Bailiff.

I do hereby authorize and require you to distrain the goods and chattels of C. D. (*the tenant*) in the house he now dwells in, [or on the premises in his possession], situate at \_\_\_\_\_, in the county of \_\_\_\_\_, for \_\_\_\_\_ dollars, being one year's rent due to me for the same on the first of May last, and to proceed thereon for the recovery of the said rent, as the law directs.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

J. S. (*Landlord*)

#### *Inventory and Notice.*

An inventory of the several goods and chattels distrained by me, J. S., [*or if as Bailiff, say A. B., as Bailiff to Mr. J. S.*] this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, 18 \_\_\_\_, in the dwelling-house, out-houses and lands [*as the case may be*] of C. D., situate at \_\_\_\_\_, in the county of \_\_\_\_\_, [*and if as Bailiff, say, by the authority and on the behalf of the said J. S.,*] for the sum of \_\_\_\_\_ dollars, being one year's rent due to me [*or to the said J. S.,*] for the said houses and premises on first of May last, and as yet in arrear and unpaid.



1. *In the Dwelling-house. (Kitchen)* Two pine tables, six old chairs, five copper sauce-pans, &c., &c. *(Parlor)* One large pier looking-glass, two sconces in gilt frames, two mahogany card tables, &c., &c. *(Dining Room)* Six hair-bottom chairs, mahogany frames, &c., one set of dining tables, &c., &c.

*(Out-houses)* 2. *In the Barn.* Six sacks of wheat, six hurdles, &c., &c.

[And so on, describing the things as correctly as may be according to the place from which they are taken. At the bottom of the inventory subscribe one of the following notices to the tenant according as the case may be.]

Mr. C. D.

Take notice that I have this day distrained (or that I, as Bailiff to J. S., your landlord, have this day distrained) on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of \_\_\_\_\_ dollars, being one year's rent due to me (or to the said J. S.) on first of May last, for the said premises, and that unless you pay the said arrears of rent, with the charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_  
J. S. (Landlord.)  
or A. B. (Bailiff.)

#### *Notice of Distress of growing crops.*

Mr. C. D.,

Take notice that I have this day taken and distrained, (or that as Bailiff to J. S., your landlord, I have taken and distrained), on the lands and premises known as lot number one in the township of \_\_\_\_\_ &c., &c., the several growing crops specified in the inventory for the sum of \$ \_\_\_\_\_, being one year's rent due to me (or to the said J. S.) on the first of May last, for the said lands and premises; and unless you previously pay the said rent with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry and lay up the crops when ripe, in the barn or other proper place on the said premises, and in convenient time sell and dispose of the same towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to the form of the statute in such case made and provided.

Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_  
J. S. (Landlord.)  
or A. B. (Bailiff.)

A true copy of the above inventory was this \_\_\_\_\_ day of \_\_\_\_\_ delivered to the above mentioned C. D., in the presence of us.

G. H.  
J. K.

*Tenant's request for delay.*

Mr. A. B.,

I hereby desire you will keep possession of my goods which you have this day distrained for rent due or alleged to be due from me to you, in the place where they now are, being the house No. 3 Dean Street, Toronto, for the space of seven days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Witness my hand this                      day of                      , 18 .

C. D.

Witness,

R. S.

*Notice to quit by Landlord.*

To C. D. (Tenant.)

I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at (*here describe the premises*) on the                      day of                      , 18 .

Dated this                      day of                      , 18 .

Yours, &amp;c.,

A. B. (Landlord.)

*Notice to quit by Tenant.*

To A. B., (Landlord.)

I hereby give you notice that on the                      day of                      next I shall quit and deliver up to you, the peaceable and quiet possession of the premises now held by me, with the appurtenances situate at                      , in the township of                      , in the county of                      , in this Province.

Dated this                      day of                      , 18 .

Yours, &amp;c.,

C. D. (Tenant.)

## LINE FENCES.

## ONTARIO.

The provisions of the law upon the subject of the erection and maintenance of line fences are very similar in the Provinces of Ontario, New Brunswick, Prince Edward Island, Manitoba and British Columbia, in all of which special statutes have been enacted governing the subject. It is thought necessary only to give the exact statutory law of one Province, namely, Ontario, which is concisely embraced in the R. S. O. cap. 198. The expression "occupied lands," where it occurs below does not include so much of a lot, parcel or farm as in unenclosed, although a part of such lot, parcel or farm is enclosed and in actual use and occupation. The Act is as follows:

*An Act respecting Line Fences.***1.** This Act may be cited as "*The Line Fences Act.*"

**2.** Owners of occupied adjoining lands shall make, keep up and repair a just proportion of the fence which marks the boundary between them, or if there is no fence, they shall so make, keep up and repair the same proportion, which is to mark such boundary; and owners of unoccupied lands which adjoin occupied lands, shall, upon their being occupied, be liable to the duty of keeping up and repairing such proportion, and in that respect shall be in the same position as if their land had been occupied at the time of the original fencing, and shall be liable to the compulsory proceedings hereinafter mentioned. 37 V. c. 25, s. 2.

**3.** In case of dispute between owners respecting such proportion, the following proceedings shall be adopted:

**1.** Either owner may notify (Form 1) the other owner, or the occupant of the land of the owner so to be notified, that he will, not less than one week from the service of such notice, cause three Fence-viewers of the locality to arbitrate in the premises.

**2.** Such owners so notifying shall also notify (Form 2) the Fence-viewers, not less than one week before their services are required.

3. The notices in both cases shall be in writing, signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and may be served by leaving the same at the place of abode of such owner or occupant, with some grown-up person residing thereat ; or in case of such lands being untenanted, by leaving such notice with any agent of such owner.

4. The owners notified may, within the week, object to any or all of the Fence-viewers notified, and in case of disagreement, the Judge hereinafter mentioned shall name the Fence-viewers who are to arbitrate. 37 V. c. 25, s. 3.

4. An occupant, not the owner of land, notified in the manner above mentioned, shall immediately notify the owner ; and if he neglects so to do, shall be liable for all damage caused to the owner by such neglect. 37 V. c. 25, s. 9.

5. The Fence-viewers shall examine the premises, and if required by either party, they shall hear evidence, and are authorized to examine the parties and their witnesses on oath, and any one of them may administer an oath or affirmation as in Courts of Law. 37 V. c. 25, s. 4.

6. The Fence-viewers shall make an award (Form 3) in writing, signed by any two of them, respecting the matters so in dispute ; which award shall specify the locality, quantity, description and the lowest price of the fence it orders to be made, and the time within which the work shall be done, and shall state by which of the said parties the costs of the proceedings shall be paid, or whether either party shall pay some proportion of such costs.

2. In making such award, the Fence-viewers shall regard the nature of the fences in use in the locality, the pecuniary circumstances of the persons between whom they arbitrate, and generally the suitability of the fence ordered to the wants of each party.

3. Where, from the formation of the ground, by reason of streams or other causes, it is found impossible to locate the fence upon the line between the parties, it shall be lawful for the Fence-viewers to locate the said fence either wholly or partially on the land of either of the said parties, where to them it seems to be most convenient ; but such location shall not in any way affect the title to the land.

4. If necessary, the Fence-viewers may employ a Provincial Land Surveyor, and have the locality described by metes and bounds. 37 V. c. 25, s. 5.

7. The award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate, and shall be an official document, and may be given in evidence in any legal proceeding by certified copy, as are other official documents ; and notice of its being made shall be given to all parties interested. 37 V. c. 25, s. 6.

8. The award may be enforced as follows:—The person desiring to enforce it shall serve upon the owner or occupant of the adjoining lands a notice in writing, requiring him to obey the award, and if the award is not obeyed within one month after service of such notice, the person so desiring to enforce it may do the work which the award directs, and may immediately recover its value and the costs from the owner by action in any Division Court having jurisdiction in the locality; but the Judge of such Division Court may, on application of either party, extend the time for making such fence to such time as he may think just. 37 V. c. 25, s. 7.

9. The award shall constitute a lien and charge upon the lands respecting which it is made, when it is registered in the Registry Office of the County, or other Registration Division in which the lands are.

2. Such registration may be in duplicate or by copy, proved by affidavit of a witness to the original, or otherwise, as in the case of any deed which is within the meaning of "*The Registry Act*." 37 V. c. 25, s. 8.

10. The Fence-viewers shall be entitled to receive two dollars each for every day's work under this Act. Provincial Land Surveyors and witnesses shall be entitled to the same compensation as if they were subpoenaed in any Division Court. 37 V. c. 25, s. 10.

11. Any person dissatisfied with the award made may appeal therefrom to the Judge of the County Court of the County in which the lands are situate, and the proceedings on such appeal shall be as follows:

1. The appellant shall serve upon the Fence-viewers, and all parties interested, a notice in writing of his intention to appeal within one week from the time he has been notified of the award; which notice may be served as other notices mentioned in this Act.

2. The appellant shall also deliver a copy of such notice to the Clerk of the Division Court of the Division in which the land lies, and the Clerk shall immediately notify the Judge of such appeal, whereupon the Judge shall appoint a time for the hearing thereof, and, if he thinks fit, order such sum of money to be paid by the appellant to the said Clerk as will be a sufficient indemnity against costs of the appeal.

3. The Judge shall order the time and place for the hearing of the appeal, and communicate the same to the Clerk, who shall notify the Fence-viewers and all parties interested, in the manner hereinbefore provided for the service of other notices under this Act.

4. The Judge shall hear and determine the appeal, and set aside, alter, or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath, and, if he so pleases, may

inspect the premises; and may order payment of costs by either party, and fix the amount of such costs.

5. His decision shall be final; and the award, as so altered or confirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

6. The practice and proceedings on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the Division Court. 37 V. c. 25, s. 11; 40 V. c. 7, *Sched. A.* (202); 40 V. c. 8, s. 58.

12. Any agreement in writing (Form 4) between owners respecting such line fence may be filed or registered and enforced as if it was an award of Fence-viewers. 37 V. c. 25, s. 12.

13. The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence.

(a) Without giving at least six months' previous notice of his intention to the owner or occupier of such adjacent enclosure;

(b) Nor unless such last mentioned owner or occupier after demand made upon him in writing by the owner of such fence, refuses to pay therefor the sum to be determined as provided in the sixth section of this Act;

(c) Nor if such owner or occupier will pay to the owner of such fence or of any part thereof, such sum as the Fence-viewers may award to be paid therefor under the sixth section of this Act. 40 V. c. 29, s. 1.

2. The provisions of this Act relating to the mode of determining disputes between the owner of occupied adjoining lands; the manner of enforcing awards and appeals therefrom; and the schedules of forms attached hereto, and all other provisions of this Act, so far as applicable, shall apply to proceedings under this section. 40 V. c. 29, s. 2.

14. If any tree is thrown down, by accident or otherwise, across a line or division fence, or in any way in and upon the property adjoining that upon which such tree stood, thereby causing damage to the crop upon such property or to such fence, it shall be the duty of the proprietor or occupant of the premises on which such tree theretofore stood, to remove the same forthwith, and also forthwith to repair the fence, and otherwise to make good any damage caused by the falling of such tree.

2. On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the same, the injured party may remove the same, or cause the same to be removed, in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain such tree to remunerate him for such removal, and

may also recover any further amount of damages beyond the value of such tree from the party liable to pay it under this Act.

3. For the purpose of such removal the owner of such tree may enter into and upon such adjoining premises for the removal of the same without being a trespasser, avoiding any unnecessary spoil or waste in so doing.

4. All disputes arising between parties relative to this section, and for the collection and recovery of all or any sums of money becoming due thereunder, shall be adjusted by three Fence-viewers of the Municipality, two of whom shall agree. 29-30 V. c. 51, s. 355 (28).

15. The forms in the Schedule hereto are to guide the parties, being varied according to circumstances. 37 V. c. 25, s. 13.

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### SCHEDULE OF FORMS.

#### FORM 1.

##### (Section 3.)

#### NOTICE TO OPPOSITE PARTY.

Take notice, that Mr. , Mr. , and Mr. ,  
three fence-viewers of this locality, will attend on the day  
of , 18 , at the hour of , to view and arbitrate  
upon the line fence in dispute between our properties, being Lots  
(or parts of Lots) *One* and *Two* in the Concession of the  
Township of , in the County of .  
Dated this day of , 18 .

A. B.,

Owner of Lot 1.

To C. D.,  
Owner of Lot 2.

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#### FORM 2.

##### (Section 3.)

#### NOTICE TO FENCE-VIEWERS.

Take notice, that I require you to attend at on the  
day of , A.D. 18 , at o'clock a.m., to  
view and arbitrate on the line fence between my property and that

of Mr. , being Lots (or parts of Lots) Nos. One and Two  
in the Concession of the Township of , in the  
County of  
Dated this day of , 18

A. B.,  
Owner of Lot 1.

FORM 3.

(Section 6.)

AWARD.

We, the fence-viewers of (name of the locality), having been nominated to view and arbitrate upon the line fence between

by (name and description of owner who notified) and (name and description of owner notified), which fence is to be made and maintained between (describe properties), and having examined the premises and duly acted according to "The Line Fences Act," do award as follows: That part of the said line which commences at

and ends at (describe the points) shall be fenced, and the fence maintained by the said , and that part thereof which commences at

and ends at (describe the points) shall be fenced, and the fence maintained by the said . The fence shall be of the following description (state the kind of fence, height, material, &c.) and shall cost at least per rod. The work shall be commenced within days, and completed within days from this date, and the costs shall be paid by (state by whom paid; if by both, in what proportion.)

Dated this day of , A.D. 18

(Signatures of fence-viewers.)

FORM 4.

(Section 12.)

AGREEMENT.

We and , owners respectively of Lots (or parts of Lots) One and Two in the Concession of the Township of , in the County of , do agree that the line fence which divides our said properties shall be made and maintained by us as follows: (follow the same form as award.)

Dated this day of , A.D. 18

(Signatures of parties.)



## AN ACT TO FURTHER AMEND THE LINE FENCES ACT, 47 VICT. CAP. 42.

1. Where, within the meaning of section 3 of "*The Line Fences Act*," there is any dispute between owners or occupants of lands situate in different municipalities, the following words or expressions in said Act shall have the meaning hereinafter expressed, namely:

(1) The phrase "fence viewers" shall mean two fence viewers of the municipality in which is situate the land of the owner or occupant notified under sub-section 1 of section 3 of said Act, and one fence viewer of the municipality in which is situate the land of the party or person giving the notice; except that in case of a disagreement having occurred within the meaning of sub-section 4 of said section, the said phrase "fence viewers" shall mean fence viewers from either or both municipalities.

(2) The expression "in which the lands are situate" and the expression "in which the land lies," shall respectively mean "in which are situate the lands of the owner or occupant so notified under said sub-section one."

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MANITOBA.

By the R. S. M. cap. 25, An Act respecting Boundary Lines and Line Fences, it is provided that in case the owner of land requires to have any boundary line surveyed, he shall give notice thereof in writing to all parties interested, and in one month thereafter may employ a duly qualified surveyor, who shall survey the said line, and each party interested shall pay his proportionate share of the expenses of the survey.

No line fence shall be removed without the consent of all parties interested, and whenever any owner of land erects a line fence, the owner of the adjoining land shall, as soon as he encloses land adjacent or along the line fence, pay to the person who erected the line fence, or to his assignee, a fair compensation for one-half the line fence; such compensation may be determined by arbitration if not otherwise agreed on.

Each of the parties occupying adjoining tracts of land shall make, keep up, and repair, a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof.

The owner of the whole or part of a division or line fence which forms part of a fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence without giving at least twelve months' notice of his intention so to do to the owner or occupier of such adjoining enclosure, nor unless the latter, after demand in writing, refuses to pay therefor such sum as three fence viewers, or a majority of them, in writing, determine to be a reasonable value therefor. All disputes relating to line fences are determined by three fence viewers, or a majority of them, who make their award in writing. This award is transmitted to the clerk of the County Court of the County where the land is situate. If any party neglects or refuses to appoint a fence viewer to act for him, the latter may be appointed by a Justice of the Peace, who is, for such appointment, entitled to a fee of one dollar. Fence viewers are entitled to a fee of two dollars per day each, for not more than two days, and one dollar for transmitting their award.

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## MASTER AND SERVANT.

In law the terms "Master" and "Servant" have a wider definition than is given them in their popular signification, and are more nearly construed by the terms "Employer" and "Employed." Contracts of this nature (as, indeed, all other contracts) are best put in writing. If this rule were generally observed, much expensive and vexatious litigation would be avoided. Contracts for service not to be performed within a year must by law be committed to writing, and must be signed by the party to be held liable thereon or his agent duly authorized. If this is not done the contract is invalid and cannot be enforced. Where writing is employed, care should be taken that the full terms and stipulations agreed upon be embraced in the document, and both parties should sign it, before a witness if possible.

A general verbal hiring, without stipulations as to the periods of payment, etc., will be construed by law, and in the absence of facts leading to a contrary conclusion, to be a hiring for a year. But if there be stipulations as to the periods of payment, as, for instance, the payment of wages by the week or month, these circumstances may determine the hiring to be a weekly or monthly hiring, and then the law applicable to a weekly or a monthly hiring will apply. General custom will also regulate the determination of this point.

With regard to menial or domestic servants, a well established custom prevails: the master may terminate the contract at any time by giving a month's notice, or

by payment of a month's wages, and the servant, on his part, by a similar notice, or forfeiture of a month's wages. But governesses and tutors are not domestic servants, and this rule will not apply to them. Their engagements, in the absence of express stipulation, will be presumed to be yearly engagements, terminable on three months' notice, or payment of three months', or one quarter's salary. The quarter's notice may terminate the engagement at any time, not necessarily the end of a current year.

Employees are sometimes paid by a stated proportion, or percentage, of the profits of the employer's business being given them, either in lieu of, or in addition to, wages or salary. Such agreements should invariably be in writing and carefully prepared, in order that the contract may not be construed as one of partnership, with all its incidents, such as the employee's right of demanding an account of the business, etc., and, on the other hand, his responsibility for its debts.

In the absence of an express contract between the parties, an agreement of hiring may be presumed from the mere fact of the service, unless the service has been with near relations. For example, if a man serves another in the capacity of a book-keeper or farm servant, or groom, for a continued period, the law presumes that the service has been rendered in fulfilment of a contract of hiring or service, and if nothing has been said about wages, the law presumes that the parties agreed for such wages as are customary or reasonable in that class of employment. But where the service has been with a parent, or near relation, of the party serving, a hiring is not presumed by the law, but must be expressly proved to support a claim for wages; for such services

are often rendered as acts of charity or kindness, and are not presumed to be paid for unless a special agreement has been made.

A groom or coachman, occupying rooms over a coach house, or stable, or a lodge-keeper or farm servant occupying a separate house upon his master's premises, does not thereby become a *tenant*, requiring due notice to quit before being legally required to give up the premises occupied. The question of whether such person becomes a tenant as well as a servant is sometimes one difficult to determine, but if there is no lease given, or rent paid by the servant (even though the benefit of the occupation of such premises be taken into account in fixing the amount of wages,) and if the occupation be for the more convenient rendering of the services required of the employed, there can be, generally speaking, no tenancy implied. The occupation of the servant is that of his master.

The servant must enter upon his duties at the time agreed; and must serve during the period specified, or until the contract is legally put an end to, as by notice, etc. He must obey all lawful commands, and perform all such services as are usually required of one in his class of employment, or such as he has specially agreed to perform; but cannot be required to go beyond this, or serve in a capacity not originally contemplated. He must be faithful, obedient and honest in his employment. His failure in these respects may subject him to dismissal, or an action for breach of contract on the part of his master. If the service in which he is employed is one requiring a certain amount of skill, the fact of his entering voluntarily upon the employment is taken

as an implied guaranty on his part that he is possessed of such necessary skill, and his want of it is a breach of the contract. While not generally liable for mere accidents or unintentional acts resulting in loss to the master or destruction of the master's property, he is yet responsible for *negligence* causing loss, more especially if repeated.

Wilful disobedience, habitual neglect of just and reasonable orders, repeated absence without leave, or refusal to perform work, on the part of the servant, justifies the master in dismissing him without the usual notice.

The servant is also responsible to his master in damages for any fraud or wrongful act which renders the master liable in damages to a third person.

The master must receive the servant into his service, so as to permit him to earn his wages, unless, indeed, he have such grounds for refusing as would justify him in immediately dismissing the servant if received.

Having received him, the master must retain and employ him during the term stipulated, or until the contract is legally dissolved in the performance of the duties contemplated in the agreement of hiring, and pay him his lawful wages or compensation. He cannot require the performance of unusual services, or such as subject the servant to danger of life or limb, where such is not specifically agreed to by the servant. The implements, tools, machinery or engines which he supplies for his servants or workmen in their employment must be in proper condition and reasonably safe to protect the workmen against unnecessary hazards. And should such be in an unsafe condition, the servant is justified in refusing to work with them. If the servant, how-

ever, with full knowledge of the defect of the implement or machine, chooses voluntarily to work with it, the master will not be responsible for injuries occasioned the servant through such defects.

A servant or workman has a right to expect that his fellow workmen employed by his master to assist him in any work are reasonably competent for employment in such work, and should they be not so, and it be proved that the master was negligent in their selection, and in fact had no grounds for believing them competent, he would be liable for injuries arising through their ignorance or unskilfulness. But otherwise a master may be said to be not liable to a servant for injuries sustained by the latter through the negligence of a fellow servant; but he will be responsible for any accident which occurs to a servant through the master's own personal negligence.

A servant who is aware of the risks incident to his employment, impliedly accepts them, and cannot hold his master liable for damages he may suffer in the ordinary course of that employment.

Should the servant, in obedience to his master's order do any act apparently lawful, or not to the servant's knowledge unlawful, but thereby incur any civil responsibility to damages to another person, he is entitled to call upon his master to protect and indemnify him from any loss sustained. But if the servant, in obedience to an order, knowingly performs a criminal act, he cannot seek such indemnity.

In regard to domestic servants, it is implied in their contract of hiring that they shall be supplied with proper food, shelter, bedding and other necessities. The master is not, however, compelled to pay for

medicines or medical attendance. Where the servant falls ill or is temporarily incapacitated for work by hurt or accident in his master's service, no deduction of wages for the time lost should be made.

A master is not justified in inflicting corporal punishment upon a servant of full age. Any attempt to do so renders him liable for an assault. Moderate punishment may be resorted to in case of a child who is a servant or apprentice, for sufficient cause, as continued and wilful disobedience.

In the absence of stipulation, the servant is entitled to such wages as are fair, or usual for the class of work performed or services rendered, or such as a jury will award.

Where a servant is discharged by his master for good and sufficient cause, he cannot claim wages already earned by him previous to such discharge though not yet payable according to the terms of the contract of hiring.

The death of either servant or master concludes the contract, and in the absence of custom or statute, wages for the broken period between the last regular day of payment and the death cannot be recovered.

The right of discharge is based upon the assumed breach of the contract by the servant himself. It implies the right of the master to dismiss the servant immediately, without waiting for the expiration of the stipulated term of service and without giving the ordinary length of notice.

A discharged servant who refuses to leave the premises is a trespasser who may be put off by force.

The law relating to APPRENTICES is separately dealt with in a former chapter.



STRIKES and BOYCOTTING are treated hereafter in a separate chapter.

ONTARIO.

By the provisions of Revised Statute, chapter 133, no voluntary contract of service is to be binding on any of the parties for a longer term than nine years from the date of the contract.

Verbal agreements of service shall not exceed one year in duration, but all agreements for service shall be binding on the parties thereto for the due fulfilment thereof. Disputes with respect to the terms of the agreement, or anything pertaining thereto, misuse of a servant, non-payment of wages, etc., are determined before a Justice of the Peace. By an amendment to the Act, passed in 1886, any agreement or bargain, verbal or written, express or implied, made between any person, and any other person not a resident of Canada, with reference to the employment of such other person within the Province, and made previous to the migration or coming into Canada of the person to be employed, shall be, as against such person, void and of no effect. But this amendment of the law does not apply to the employment of skilled foreign workmen upon new industries, or at any industry where skilled workmen cannot otherwise be obtained; nor to teachers, professional actors, artists, lecturers or singers. Special classes of workmen are also, in this Province, affected by the provisions of "The Railway Accidents Act, 1881," "The Ontario Factories Act, 1884," and "The Workmen's Compensation for Injuries Act, 1886;" the first named of which requires certain safeguards to be taken by Railway Companies in the interests

of their employees, the second named secures valuable rights to employees in factories; and the third determines certain rights of employees against their employers for injuries sustained by reason of defective machinery and appliances, or the co-employment of incompetent overseers or workmen. An extended notice of these statutes is not in this place necessary, inasmuch as reference to the very words and terms of the Act is indispensable to all affected by them.

By cap. 29 of the statutes of 1885, upon any assignment for the general benefit of creditors, or upon winding up of Joint Stock Companies, the wages or salary of employees who were such at the date of the assignment or winding up order, or within one month prior thereto, not exceeding three months' wages or salary, shall rank upon the assets in priority to the claims of ordinary or general creditors. For the residue, if any, of their claims, such persons may rank as ordinary or general creditors. Employees of execution debtors are similarly protected. The Act applies to wages or salary, whether the employment in respect to which the same is payable be by the day, by the week, by the job or piece, or otherwise.

No tavern keeper or boarding-house keeper shall keep the wearing apparel of any servant or labourer in pledge for any expenses incurred to a greater amount than six dollars, and on payment or tender of such sum, or any less sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer. But this does not apply to other property of the servant or labourer.

#### THE CANADIAN LAWYER.

Application may be made to any Justice of the Peace to enforce the above law.

Such Justice may also summon any master or employer, against whom complaint is made by a servant or labourer for non-payment of wages, to appear before such Justice, and may examine into the complaint, and may discharge the servant or labourer from the service or employment of such master, or may direct the payment to him of any wages found to be due, not exceeding forty dollars, to be levied with costs against the master, if not paid in twenty-one days.

#### MANITOBA.

Any hired clerk, journeyman, apprentice or servant, or labourer, who is guilty of ill-behaviour, drunkenness, refractory conduct, or idleness, or of deserting service or duties, or absenting himself without leave of his employer, or refusing or neglecting to perform his duties, or to obey the lawful commands of his master or mistress, or who is guilty of dissipating the property of his master or mistress, or of any unlawful act injuriously affecting their interests, shall be liable, upon conviction before a Justice of the Peace, to a penalty not exceeding twenty dollars and costs.

The same penalty may be inflicted on any domestic servant, journeyman or labourer, who deserts or abandons his service or job, or who neglects or refuses to perform the job or work for which he or she was engaged, before the time agreed upon, or before the completion of the agreement. Persons knowingly harbouring or concealing a servant or apprentice who has abandoned the service of his master or mistress, or

instigating any servant or apprentice to abandon such, is liable to the same penalty.

Suits for wages up to \$100 may be brought before any Justice of the Peace.

Every builder or contractor, whether chief contractor or sub-contractor, employing workmen by the day or by piece work to carry out his contract, is required to keep a pay-list drawn up in the form of the schedule "A" hereunder given, showing the names and wages or price of the work of such workmen; and every payment made to them shall be attested by the signature or cross of each of such workmen, made in presence of a witness who shall also sign the pay-list; and any proprietor shall require the production of such pay-list before the payment of any amount claimed to be due on such work.

It is the duty of the proprietor for whom the work is being done, from time to time, to see that the workmen who appear by the pay-list to be unpaid, are paid what is owing them by the builder or contractor; and until the workmen are paid in full the proprietor is, to the amount of the contract price, equally liable with the builder or contractor to the workmen directly for such amounts owing, and may be sued as the contractor could be.

A copy of the original contract must be filed by the builder or contractor, under oath, with the Clerk of the County Court, where the same is open to inspection: he may also register it in the Registry Office.

Where suit is brought, several workmen may join in one action, and where the money recovered is less than the full amount of their claims, it must be divided rateably among them. Workmen furnishing labour or

materials have a right to inspect the premises they are working on, to enable them to compute their claims, and their witnesses have a similar right. If the contract is not completed, they are allowed what it is worth. Where the proprietor or contractor makes an assignment for the general benefit of creditors, the overdue wages or salary of all persons employed within one month prior to the assignment, not exceeding three months' wages or salary, is paid as a preferential claim. Such employees are also entitled, on sale of the property of a debtor under execution, to be paid by the sheriff their overdue wages or salary, not exceeding three months' wages or salary, in priority to the claims of other creditors, upon delivering to the sheriff or bailiff a claim under oath, as in schedule "B" given hereunder.

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#### SCHEDULE "A."

Pay-list of the workmen employed by A. B. (name of the contractor) upon the works being contracted for C. D. (name of the proprietor.)

Name of Workman.	No. of Days.	Wages per Day.	Nature of Job.	Price of Job.	Total Amount due.	Receipt Signature of Workman.	Signature of Witness of Pay't.

## SCHEDULE "B."

A. B. - - Claimant

v.

C. D. - - Defendant.

I, A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_, make oath and say:

1. I am the above named claimant.
2. The above named defendant is justly and truly indebted to me in the sum of \_\_\_\_\_ dollars for *(here state shortly the nature and particulars of the claim.)*

Sworn, etc.

A. B.

## PRINCE EDWARD ISLAND.

By chapter 26 of the Act Wm. IV., it was enacted that all contracts that shall be entered into relative to the hire of servants, if for the term of one month or for any longer period, shall be made in writing and signed by the parties thereto; or shall be made verbally in presence of one or more credible witnesses.

Servants engaging for one calendar month or more may be punished for misconduct, absence from duty, etc., upon complaint before two Justices, by confinement in gaol for any term not exceeding one calendar month. Similarly, masters convicted before two Justices of ill-treating servants may be punished by fine.

Any person knowingly hiring the servant of another, or hiring any servant without a written discharge from his or her last master or mistress being produced (if such master or mistress is resident in the Island,) may be fined £5, and any master refusing a discharge to a servant justly demanding the same may be fined a similar sum.

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## MECHANICS' LIENS.

A MECHANIC'S LIEN is the right which any mechanic, machinist, builder, miner, labourer, contractor or other person, doing work upon any building, erection or mine, or furnishing materials to be used in its construction, alteration or repair, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with it, has to claim an interest in what his labour and materials have contributed to make valuable, as though he were a part owner; his right being limited to the just price of such work, materials or machinery.

The lien does not exist save where established by special statutes, but such have been enacted in at least five of the Provinces of the Dominion.

This lien is practically a mortgage in favour of the mechanic, or person furnishing labour or materials, upon the building or erection, and the lands upon which it stands, or on the mine. The statutes generally declare a lien holder a purchaser to the amount of the claim; and his interest in the building or erection may be insured by him against destruction by fire; but if the building be destroyed or blown down before the lien is filed, it cannot then be filed.

The Acts upon this subject in the Provinces of Ontario, Nova Scotia, Prince Edward Island, Manitoba and British Columbia are so nearly identical in all their features, that it is considered unnecessary in a work of this nature to give each in detail.

The exact statute law of Ontario, with all amendments to date, is given below. The Nova Scotia Statute is cap. 85 of the Revised Statutes of that

Province, and may be said to be identical with the Ontario Acts with regard to the rights of the parties, as well as the procedure and forms to be followed.

The same may be said of the law governing the subject in Prince Edward Island, the statute being the 42 Vict. cap. 8, amended by the 45 Vict. cap. 11; and of the law in force in Manitoba, which is cap. 53 of the R. S. M., amended by the Act passed in 1883. The statutory requirements must be strictly complied with.

#### ONTARIO.

1. This Act may be cited as "*The Mechanics' Lien Act.*"

2. In the construction of this Act

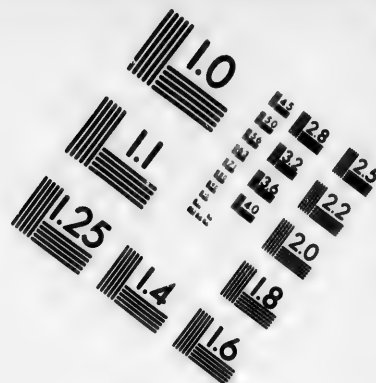
(1). "Contractor" shall mean a person contracting with or employed directly by the owner for the doing of work or placing or furnishing of machinery or materials for any of the purposes mentioned in this Act:

(2). "Sub-contractor" shall mean a person not contracting with or employed directly by the owner for the purposes aforesaid, but contracting with or employed by the "Contractor," or under him by another "Sub-contractor;" and

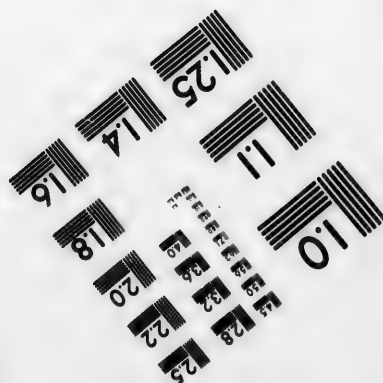
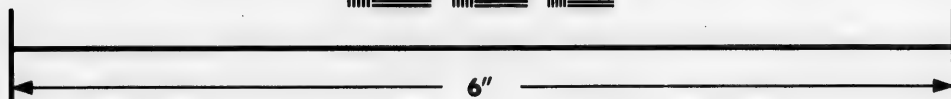
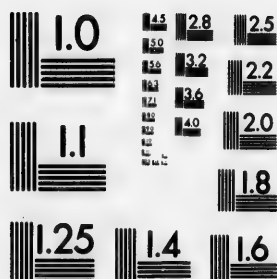
(3). "Owner" shall extend to and include a person having any estate or interest, legal or equitable, in the lands upon or in respect of which the work is done, or materials or machinery are placed or furnished, at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work is done, or materials or machinery placed or furnished, and all persons claiming under him, whose rights are acquired after the work in respect of which the lien is claimed is commenced, or the materials or machinery furnished have been commenced to be furnished. 38 V. c. 20, s. 1.

3. Unless he signs an express agreement to the contrary, every mechanic, machinist, builder, miner, labourer, contractor or other person doing work upon or furnishing materials to be used in the construction, alteration or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon or in connection with any building, erection or mine, shall, by virtue of being so employed or furnishing, have a lien or charge for the price of such work, machinery or materials, upon such building, erection or mine, and the lands occupied thereby or enjoyed therewith, and limited in amount to such sum as is justly due to the person entitled to such lien. 36 V. c. 27, s. 1; 38 V. c. 20, s. 2. *By a subsequent*





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*amendment, no agreement shall be held to deprive anyone otherwise entitled to a lien, and not a party to such agreement, of the benefit of such lien.*

4. A statement of claim, in the form or to the effect in the Schedule to this Act, may be filed in the Registry Office in the County or other Registration Division in which such land is situate, before or during the progress of the work aforesaid, or within thirty days from the completion thereof, or from the supplying or placing of the machinery aforesaid.

3. Such statement of claim shall be verified by the affidavit of the person entitled thereto, to be sworn before any Commissioner for taking affidavits in the County, and shall state:

(a) The name and residence of the claimant and of the owner of the property to be charged, and of the person for whom and upon whose credit the work is done or materials or machinery furnished, and the time or period within which the same was, or was to be, done or furnished:

(b) The work done or materials or machinery furnished;

(c) The sum claimed as due, or to become due;

(d) The description of the land to be charged.

3. When such statement is so registered, the person entitled to said lien shall be deemed a purchaser *pro tanto*, and within the provisions of "*The Registry Act*," 36 V. c. 27, s. 2.

5. The Registrar, upon payment of the fee of one dollar, shall register such claim, so that the same may appear as an incumbrance against the land therein described; and such lien shall be discharged by the Registrar on his receiving a certificate to that effect from the person entitled to said lien, and verified as required in cases of certificate of discharge of mortgage. 36 V. c. 27, s. 3.

6. Every lien under this Act shall attach upon the estate and interest, legal or equitable, of the owner in the building, erection or mine upon or in respect of which the work is done or the materials, or machinery placed or furnished, and the land occupied thereby or enjoyed therewith; but the lien shall not in any case attach upon such estate and interest, so as to make the same or the owner thereof liable to the payment of any greater sum than the sum payable by the owner to the contractor; and in case the lien is claimed by a sub-contractor, the amount which may be claimed in respect thereof shall be limited to the amount payable to the contractor or sub-contractor (as the case may be) for whom the work has been done, or the materials or machinery have been furnished or placed. 38 V. c. 20, s. 3.

2. In cases where the estate or interest charged by said lien is leasehold, the fee simple may also, with the consent of the owner thereof, be subject to said charge, provided such consent is testified by the signature of such owner upon the statement of claim at the time of the registering thereof, and duly verified. 36 V. c. 27, s. 10.

7. In case the land upon or in respect of which the work is done or materials or machinery are placed, is incumbered by a mortgage or other charge existing or created before the commencement of the work or the placing of the materials or machinery upon the land, such mortgage or other charge shall not have priority over the lien to any greater extent than the sum by which the selling value of the land, with such work, materials or machinery thereon, exceeds the sum by which such selling value thereof has been actually increased by the improvement caused by such work, materials, or machinery being placed thereon. 38 V. c. 20, s. 4.

8. All persons furnishing material to or doing labour for the person claiming a lien under this Act, in respect of the subject of such lien, who notify the owner of the premises sought to be affected thereby, within thirty days after such material is furnished or labour performed, of an unpaid account or demand against such lien-holder, for such material or labour, shall be entitled to a charge therefor *pro rata* upon any amount payable by such owner under said lien; and if the owner thereupon pays the amount of such charge to the person furnishing material and doing labour as aforesaid, such payment shall be deemed a satisfaction *pro tanto* of such lien. 36 V. c. 27, s. 11.

9. In case of any dispute as to the validity or amount of such unpaid account or demand, the same shall be first determined by suit in the proper Court in that behalf, or by arbitration, under sections eighteen and nineteen, at the option of the person having such unpaid account or demand against the lien-holder; and during the pending of the proceedings to determine the dispute, so much of the amount of the lien as is in question therein may be withheld from the person claiming the lien. 36 V. c. 27, s. 11.

10. In case the person primarily liable to the person entitled to the lien fails to pay the amount awarded within ten days after the award is made, the owner, contractor or sub-contractor may pay the same out of any moneys due by him to the person primarily liable as aforesaid, on account of the work done or materials or machinery furnished or placed in respect of which the indebtedness arose; and such payment, if made after an award shall in all cases, or if made without any arbitration having been previously had or dispute existing, then, if the indebtedness in fact existed, and to the extent thereof, operate as a discharge *pro tanto* of the moneys so due as aforesaid to the person primarily liable. 38 V. c. 20, s. 8.

11. All payments, up to ninety per centum of the price to be paid for the work, machinery or materials, as defined by section three of this Act, made in good faith by the owner to the contractor, or by the contractor to the sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing by the person claiming the lien has been given to such owner, contractor or sub-contractor (as the case may be), of the claim of such person, shall

operate as a discharge *pro tanto* of the lien created by this Act, but this section shall not apply to any payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this Act.

2. The said lien shall, in addition to all other rights or remedies given by the said Act, also operate as a charge to the extent of ten per centum of the price to be paid as aforesaid by such owner, up to ten days after the completion of the work in respect of which such lien exists, or of the delivery of the materials, and no longer, unless notice in writing be given as hereinbefore provided.

3. Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement in its properties or for the purpose of imparting an additional value to it so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right in addition to all other remedies provided by law, to sell the chattel or thing in respect of which the lien exists, on giving one week's notice by advertisement in a newspaper published in the municipality in which the work was done, or in case there is no newspaper published in such municipality, then in a newspaper published nearest thereto, stating the name of the person indebted, the amount of his indebtedness, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer; and after such sale, such mechanic or other person shall apply the proceeds of such in payment of the amount due to him and the costs of advertising and sale, and shall pay over the surplus (if any) to the person entitled thereto on application being made to him therefor, and leaving a like notice in writing at the last or known place of residence (if any) of the owner, if he be a resident of such municipality.

12. When the amount of the claims in respect of any lien is within the jurisdiction of the County or Division Courts respectively, proceedings to recover the same, according to the usual procedure of the said Court by judgment and execution, may be taken in the proper Division Court or in the County Court of the County in which the land charged is situate; or proceedings may be taken before the Judge of the said Courts, who may proceed in a summary manner by summons and order, and may take accounts and make requisite enquiries, and in default of payment may direct the sale of the estate and interest charged at such time as the same can be sold under execution, and such further proceedings may be taken for the purpose aforesaid as the Judge thinks proper in his discretion.

2. Any conveyance under the seal of the County Court Judge shall be effectual to pass the estate or interest sold.

3. The fees and costs in all proceedings taken under this section shall be such as are payable in respect of the like or similar matters

according to the ordinary procedure of the said Courts respectively. 36 V. c. 27, s. 5; 38 V. c. 20, s. 10.

**13.** In other cases the lien may be realized in the Court of Chancery according to the ordinary procedure of that Court. 36 V. c. 27, s. 6; 38 V. c. 20, s. 11.

**14.** The said Judge or Court, in his or its discretion, may also direct the sale of any machinery and authorize its removal. 36 V. c. 27, s. 7; 38 V. c. 20, s. 15.

**15.** Any number of lien-holders may join in one suit and all suits brought by a lien-holder shall be taken to be brought on behalf of all the lien-holders of the same class who shall have registered their liens before or within 30 days after the commencement of such suit, or who shall within the said 30 days file in the office from which the writ issued a statement of their respective claims; and in the event of the death of the plaintiff therein, or his refusal or neglect to proceed therewith, may by leave of the court in which the suit is brought, on such terms as may be deemed just and reasonable, be prosecuted and continued by any other lien-holder of the same class who shall have registered his lien or filed his claim in the manner and within the time above limited for that purpose.

**16.** In the event of the death of a lien-holder, his right of lien shall pass to his personal representatives, and the right of a lien-holder may be assigned by any instrument in writing. 38 V. c. 20, s. 12.

**17.** Where there are several liens under this Act against the same property, each class of the lien-holders shall rank *pari passu* for their several amounts, and the proceeds at any sale shall be distributed amongst them *pro rata*, according to their several classes and rights, and they shall respectively be entitled to execution for any balance due to them respectively after said distribution. 36 V. c. 27, s. 12; 38 V. c. 20, s. 9.

**18.** In case a claim is made by a sub-contractor in respect of a lien to which he is entitled, and a dispute arises as to the amount due or payable in respect thereof, the same shall be settled by arbitration.

2. One arbitrator shall be appointed by the person making the claim, one by the person by whom he was employed, and the third arbitrator shall be appointed by the two so chosen.

3. The decision of the arbitrators or a majority of them shall be final and conclusive. 38 V. c. 20, s. 6.

**19.** In case either of the parties interested in any such dispute refuses or neglects within three days after notice in writing requir-

ing him to do so, to appoint his arbitrator, or if the two arbitrators appointed fail to agree upon a third, the appointment may be made by a County Judge of the County in which the lands in respect of which the lien is claimed are situate. 38 V. c. 20, s. 7.

**20.** Every lien which has not been duly registered under the provisions of sections four and five shall absolutely cease to exist after the expiration of thirty days after the work has been completed, or materials or machinery furnished, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Act, and a certificate thereof, (which may be granted by the Judge or Court before whom or in which the proceedings are instituted,) is duly registered in the Registry Office of the County or other Registration Division wherein the lands in respect of which the lien is claimed are situate. 38 V. c. 20, s. 14; 36 V. c. 27, s. 4.

**21.** Every lien which has been duly registered under the provisions of sections four and five shall absolutely cease to exist after the expiration of ninety days after the work has been completed, or materials or machinery furnished, or the expiry of the period of credit, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Act, and a certificate thereof, (which may be granted by the Judge or Court before whom or in which the proceedings are instituted,) is duly registered in the Registry Office of the County or other Registration Division wherein the lands in respect of which the lien is claimed are situate. 36 V. c. 27, s. 4.

**22.** During the continuance of any lien, no portion of the property affected thereby, or the machinery therein, shall be removed to the prejudice of such lien; and any attempt at such removal may be restrained by application to the County Court or the Judge thereof, or the Court of Chancery respectively, according as the claim is under or over the sum of two hundred dollars. 36 V. c. 27, s. 8; 38 V. c. 20, s. 16.

**23.** Upon application to the County Court or the Judge thereof in claims under two hundred dollars, and to the Court of Chancery in other cases, such Judge or Court may receive security or payment into Court in lieu of the amount of such claim, and may thereupon vacate the registry of such lien, or may annul the said registry upon any other ground. 36 V. c. 27, s. 9; 38 V. c. 20, s. 17.

**24.** In any of the said cases, the Court or Judge may proceed to hear and determine the matter of the said lien, and make such order as seems just, and in case the person claiming to be entitled to such lien has wrongfully refused to sign a discharge thereof, or without just cause claims a larger sum to be due than is found by such

Judge or Court, the Judge or Court may order and adjudge him to pay to the other party such costs as the Judge or Court may think fit to award. 36 V. c. 27, s. 9; 38 V. c. 20, s. 17.

**25.** Wherever any mechanic, artisan, machinist, builder, miner, contractor, or other person, has furnished or procured any materials for use in the construction, alteration or repair of any building, erection or mine, at the request of and for some other person, such materials shall not be subject to execution, or other process, to enforce any debt, other than for the purchase thereof, due by the person furnishing or procuring such materials, and whether the same have or have not been in whole or in part, worked into, or made part of, such building or erection. 36 V. c. 27, s. 13.

**26.** Except so far as is herein otherwise provided, the provisions of "*The Registry Act*" shall not apply to any lien arising under the provisions of this Act. 38 V. c. 20, s. 18.

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## SCHEDULE.

### (Section 4.)

#### STATEMENT OF CLAIM.

A. B. of under "*The Mechanics' Lien Act*," claims a lien upon the estate or interest of C. D. of in respect of the following work (or materials), that is to say, which work was (or is to be) done (or materials were furnished) for the said C. D. on or before the day of

The amount claimed as due, or to become due, is the sum of  
dollars.

The description of the land to be charged is the following:

(Description of land.)

Dated at , this day of , A.D. 18 .  
36 V. c. 27, Sched.

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## 45 VIC. CAP. 15.

An Act to make further provision respecting the Lien of Mechanics and Laborers.

1. This Act may be cited as the "*Mechanics' Lien Act, 1882*."



2. Every mechanic, labourer, or other person, who performs labour for wages upon the construction, alteration, or repair of any building or erection, or in erecting or placing machinery of any kind in, upon, or in connection with, any building, erection, or mine, shall, to the extent of the interest of the owner as that term is interpreted by the "Mechanics' Lien Act," have, upon such building, erection, or mine, and the land occupied thereby or enjoyed therewith, a lien for such wages, not exceeding the wages of thirty days, or a balance equal to his wages for thirty days. This is not to prejudice any lien which any such person may have under the said "Mechanics' Lien Act."

3. The lien given by the preceding section shall operate notwithstanding any agreement between the owner and contractor for excluding a lien, and notwithstanding that the labour is in respect of a building, erection, or mine which belongs to the wife of the person at whose instance the work is done.

4. In case of there being a contract for the construction, alteration, repair, erecting or placing aforesaid, the said lien for wages shall, to the extent of ten per cent. of the price to be paid to the contractor, have priority over all other liens under the said Act, and over any claim by the owner against the contractor for, or in consequence of, the failure of the latter to complete his contract.

5. In case of there being such a contract as aforesaid, if any person other than the contractor has performed labour or supplied materials on or for the execution of the contract, the owner shall, in the absence of a stipulation to the contrary, be entitled to retain, for a period of thirty days after the completion of the contract, ten per centum of the price to be paid to the contractor.

6. To obtain the benefit of this Act, the proceedings to realise the lien hereby provided for may be instituted, and the lien registered, at any time (1) within thirty days after the last day's labour for which the wages are payable, or (2) within thirty days after the completion of the construction, alteration or repair of the building or erection, or after the erecting or placing of the machinery, in or towards which, respectively, the labour was performed and the wages earned, but so that the whole period shall not exceed sixty days from the last day's labour aforesaid; and the lien shall not continue after the said respective periods unless the same is duly registered before the expiration of the said periods so limited.

7. Sections twenty and twenty-one of the said "Mechanics' Lien Act" shall apply to any lien given by this Act, save as its provisions have been varied by the preceding section.

8. The statement of claim may include the claims of any number of mechanics, labourers, or other persons aforesaid, who may choose to unite in the statement; in such case the statement of each claimant is to be verified by his affidavit.

9. The statement of claim registered under this Act may be in the form A or B, appended to this Act.

10. The affidavit of verification required by the fourth section of the "Mechanics' Lien Act" need not repeat the facts set out in the statement of claim; and an affidavit substantially in accordance with Form C, appended to this Act, shall be sufficient.

11. The Registrar shall not be bound to copy in any registry book any statement or affidavit required or authorized by the "Mechanics' Lien Act," or this Act, but he shall number each statement, and shall insert in the alphabetical and abstract indexes the like particulars as in other cases. He may describe the nature of the instrument as "Mechanics' Lien." His fee for the registration shall be twenty-five cents. If several persons join in one statement the Registrar shall have a further fee of ten cents for every person after the first.

12. In case of a sale of the estate and interest charged with the lien, the court or judge may direct the sale to take place at any time after one month from the recovery of judgment, and it shall not be necessary to delay the sale for a longer period than is requisite to give reasonable notice thereof.

13. In case the land upon or in respect of which any such work as aforesaid is executed, or labour performed, is incumbered by a prior mortgage or other charge, and the selling value of the land is increased by the construction, alteration, or repair of the building, or by the erection or placing of the machinery, the lien under this Act shall be entitled to rank upon such increased value in priority to the mortgage or other charge.

14. Where judgment is given in favour of a lien, the court or judge may add to the judgment the costs of and incidental to registering the lien, as well as the costs of the suit.

15. A lien for wages may be discharged by a receipt signed by the claimant, acknowledging payment, and verified by affidavit and filed. Such receipt shall be numbered and entered by the Registrar, like other instruments, but need not be copied in any book. The fees shall be the same as for registering a statement of claim.

16. Where there was a contract for the execution of the work, as hereinbefore mentioned, the registration of all discharges or liens

for wages shall be at the cost of the contractor, unless a court or judge otherwise orders.

**17.** This Act shall be construed as one Act with the "Mechanics' Lien Act," and the lien herein given shall be enforced under the provisions of the said Act, as amended by this Act.

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### SCHEDULE.

#### FORM A.

(Section 9)

#### STATEMENT OF CLAIM OF LIEN FOR WAGES.

*A. B.* of \_\_\_\_\_, under the Mechanics' Lien Acts, claims a lien upon the lands hereinafter mentioned in respect of \_\_\_\_\_ days' work performed thereon while in the employment of *E. F.*

The amount claimed as due is the sum of \$ \_\_\_\_\_.

The description of the land to be charged is as follows:

[Description of land.]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_.

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#### FORM B.

(Section 9.)

#### STATEMENT OF CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons, under the Mechanics' Lien Acts, claim a lien upon the lands hereinafter mentioned in respect of wages for labour performed thereon while in the employment of *E. F.*

<i>A. B.</i> \$ _____	for _____	days' wages.
<i>C. D.</i> \$ _____	for _____	days' wages.
<i>E. F.</i> \$ _____	for _____	days' wages.

The description of the land to be charged is as follows:

[Description of land.]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.

## FORM C.

(Section 10.)

## AFFIDAVIT OF TRUTH OF CLAIM.

I, *A. B.*, named in the above (*or* annexed) statement of claim do make oath that the said statement is true (*or* that the said statement, so far as relates to me, is true).

*Or*, We, *A. B.* and *C. D.*, named in the above (*or* annexed) statement, do make oath, and each for himself saith that the said statement, so far as relates to him, is true.

Sworn before me at \_\_\_\_\_, in  
the County of \_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_, A. D. 188 \_\_\_\_\_

*Or*, the said *A. B.* and *C. D.* were  
severally sworn before me at \_\_\_\_\_  
in the County of \_\_\_\_\_ A. D. 188 \_\_\_\_\_

*Or*, the said *E. F.* was sworn be-  
fore me at \_\_\_\_\_ in the County of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 188 \_\_\_\_\_

## 47 VICT. CAP. 18.

The following provisions of the above Act further amend the Mechanics' Lien Act:—

**2.** In addition to the particulars which, by section 4 of the said "*The Mechanics' Lien Act*," are required to be stated in the verified statement of claim therein provided for, the date of expiry of the period of credit agreed to by the lien-holder for payment for his work, materials or machinery, where credit has been given, shall also be stated; and in the absence of such date in such verified statement the lien shall cease to exist after the expiration of 90 days after the work has been completed or materials or machinery furnished, unless in the meantime proceedings shall have been instituted pursuant to section 21 of the said Act

**3.** The affidavit of verification, referred to in said section 4, may be made by any agent or assignee of the person entitled to the lien, having full knowledge of the facts required to be verified and such affidavit, when made by an agent, or assignee, shall state that he has such knowledge, in addition to the facts required by said section to be stated.

4. That portion of section 5 of said Act which follows the word "described" in the third line thereof, is hereby repealed, and the provisions of sections 15 and 16 of "*The Mechanics' Lien Act, 1882*," shall apply to all liens now or hereafter to be registered under either of said Acts; and the said section 16 shall apply where there was a contract for the execution of work, so as to charge the contractor for whom the work was done or materials or machinery furnished with the cost of registration of discharges, unless a court or judge otherwise orders.

5. Nothing in this Act contained shall in any way interfere with, affect or prejudice the priority of lien for wages to which any mechanic, labourer or other person is entitled under "*The Mechanics' Lien Act, 1882*,"

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## MORTGAGES OF LAND.

A mortgage is a pledge of lands as security for a debt, whereby the debtor, or pledgor, or, as he is commonly called, the *mortgagor*, conveys the land to the creditor or pledgee, or, as he is commonly called, the *mortgagee*, subject to a condition or proviso that, if the debt is discharged by a day named, the pledge shall be void, and the mortgagor shall be entitled to receive back and hold the lands free from all claims created by the mortgage. What is called the legal ownership of the lands is vested in the creditor, but, in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence, or by legislative enactment.

It may be said generally that all kinds of property in land which may be absolutely sold, may be the subject of a mortgage, unless prohibited by specific legislation.

Mortgages may be legal or equitable.

A legal mortgage is described above, but may be given for the performance of a covenant as well as the repayment of a debt. It must be in writing, but may be made either in one deed containing the whole contract, or in two separate instruments, the first a conveyance in the form of an ordinary deed of grant, and the second a memorandum or statement of the conditions upon the performance of which the conveyance is to be defeated, or rendered void: the latter is called a *defeasance*, and though its use was common in ancient times it is now rarely seen.

An equitable mortgage is not in writing, but is evidenced by some act whereby the owner of land manifests an intention to pledge the same as security for a debt, as by depositing his title deeds with his creditor, at the same time concluding a verbal agreement with him to effect the charge.

Courts of Equity, whose rule it is to regard the *substance* of contracts rather than the form which parties may adopt to express them, will sometimes hold an absolute written conveyance of property to be a mortgage only, if such is established by evidence to have been the intention of the parties.

Assuming the mortgage to have been drawn in the usual form, with a proviso that on payment of the debt and interest the mortgage should be void; upon payment at the time specified in the instrument, the property will revert in the mortgagor without any deed or instrument of re-conveyance. In practice, however, it is usual to take a discharge of mortgage, which also operates as a re-conveyance. If the debt be not paid on the day named, the land, *at law*, becomes the absolute property of the mortgagee, and he may proceed to take possession of it; quietly, if he can; if not, by means of ejectment. A Court of Equity will, however, give the mortgagor liberty to redeem, at any time within *twenty* (in Ontario *ten*) *years*, on payment of what is due for principal and interest. When the debt is paid *after* the appointed day, a re-conveyance or discharge of mortgage is requisite in order to re-vest the property in the mortgagor.

In Ontario, a mortgagee may take a release of the mortgagor's interest (called an equity of redemption)

from the mortgagor, or may purchase the same under a power of sale in his mortgage, without thereby losing the right to hold the lands against any person having a claim on them *subsequent* to the mortgagee's, until his debt and interest be paid; and if such subsequent creditor should afterwards take legal proceedings to foreclose his mortgage, he will only be allowed to do so subject to the rights of the mortgagee who has so acquired the equity of redemption.

Mortgages should be executed in duplicate, and one part left in the Registry Office, as in the case of a deed of land. A mortgagee has several remedies if his mortgage money be not paid when it is due. He may bring an action at law upon the mortgagor's covenant to obtain payment of the amount of principal and interest due; or he may bring an action of ejectment (called in Ontario an action to recover the land) and obtain possession of the premises by judgment of the Court: in which case he will be entitled to hold the lands until the full amount of principal and interest has been discharged out of the rents and profits; or he may bring suit to have the mortgage foreclosed: in which case he will acquire an absolute title to the lands discharged of all equity of redemption; or sold: in which case the premises will be sold under the direction of the Court, and the debt due paid out of the proceeds, if sufficient; and if insufficient, the mortgagor will be ordered to pay the deficiency. If the mortgage contains a power of sale, the lands may be sold without going to the Court. In Ontario, all mortgages are declared by legislative enactment to include power of sale.

When a registered mortgage is paid off, a discharge



should be signed and registered: it will then be marked as discharged in the books of the Registry Office. A discharge must be signed by the mortgagee, or, if the mortgage has been assigned, by his assignee, or by his executor or administrator, if he be dead. Where a mortgage has been made in favour of a married woman, both husband and wife should properly sign the discharge. One witness to the signature is sufficient, and he must make and subscribe the usual affidavit of execution.

It is a good practice to have all payments by the mortgagor, whether of instalments of principal or interest, receipted by the mortgagee under a full written memorandum upon the back of the original mortgage itself.

When a mortgage is paid, care should be taken that it is at once properly discharged and the discharge registered.

Courts of Equity are indulgent in assisting mortgagors who may not repay the mortgage money at the stipulated time, and who are hence subject (according to the strict letter of their contract) to lose their estate; and if the land is of greater value than the amount of the money due the mortgagee, they will interfere and permit the mortgagor, within a reasonable time, to redeem his land upon payment of the full amount due the mortgagee. In further protection of mortgagors who are unfortunate, Courts of Equity will sometimes, upon proper terms, require that the mortgagee should bring the lands to sale instead of foreclosing them, so that any balance of the purchase money remaining over after payment to the mortgagee of his debt and costs should be paid over to the mortgagor.

Where, upon default of payment, the mortgagee takes possession of the property under his mortgage, the mortgagor is barred of all claim after the expiry of twenty years, unless the mortgagee has acknowledged in writing the mortgagor's right during that time.

The mortgagee is entitled to the custody of all deeds and documents of title until he is paid off, and he should be careful to enquire for and secure them. He should also register his mortgage promptly.

If the wife of the mortgagor does not join with him in executing the mortgage to bar her dower claim, the mortgage will be subject to it.

In New Brunswick, by statute 45 Vict. cap. 14, where any mortgage of realty contains a power of sale requiring notice of the time and place of such sale to be given, such notice may be registered at full length in the Registry office of the proper registration division; but before such registration, the signature of the person giving such notice must be proved in the usual way, as well as the publication of the notice. The production of the notice, with the certificate of proof of the execution of the same, and of the said registration, is declared to be *prima facie* evidence of such facts in all Courts.

In British Columbia, a Short Forms Act, nearly identical with the Ontario Statute, was enacted in 1877.

In Prince Edward Island, by the provisions of 43 Vict. cap. 7, where, upon the death of a mortgagee, his executor or administrator has become entitled to receive the moneys due upon the mortgage, then, upon default of payment, and if the heirs or devisees of the mortgagee are minors, or are otherwise incapable of

disposing of the real estate, the executor or administrator may exercise any power of sale contained in the mortgage, and upon sale may convey the land as fully and effectually in all respects as the mortgagee could have done if alive. The administrator or executor may also execute a discharge of a mortgage, or a release of any part of the mortgaged premises.

Most mortgages, as now drawn, contain what is called a *power of sale*. This is a provision or stipulation whereby the mortgagee, or his assigns, upon default of payment of interest, or of principal, for a certain specified time, may have the right to sell and absolutely dispose of the property, upon giving proper notice, but without any proceedings in a Court, recouping themselves the amount of the debt and costs out of the proceeds of the sale, and accounting to the mortgagor or his representatives for the balance. In Ontario, it is provided by statute that such a power of sale shall, by implication, be inserted and contained in every mortgage where no express power is found therein.

The provisions of the power of sale with regard to the length and kind of notice to be given the mortgagor, or his representatives or assigns, must be strictly adhered to. If notice be required, but no length of time specially stipulated for it, a reasonable length of notice must be given. The notice may be served upon an infant or a lunatic, if such be persons required by the terms of the power to be served, and the service upon them will be a proper service; though it is best in such case to serve their guardians, if any, as well. Sufficient and proper notice must, in all cases, be given; and if a sale be had without such, the mortgagee may

he rendered liable to the mortgagor and his representatives, or to a subsequent mortgagee, in damages.

The mortgagee, in exercising a power of sale, must act in such a way as to secure a fair sale of the property, so as to bring its reasonable value. He is considered in a certain sense as trustee for the mortgagor, and must act in a provident way in the disposal of the mortgaged property, and with a due regard to the rights and interests of the mortgagor, or those entitled to the surplus after payment of the mortgage debt. Should he act maliciously or from any improper motive, he may render himself liable for the mortgagor's loss thereby sustained. The general rule is that he should act with the same prudence as he would if his intention were to sell an estate of his own for the highest price.

Where an auction sale is had, the conditions of the sale should not be such as are calculated, from their stringency, or their unusual nature, to deter buyers, and hence injure the sale. Thus, to require that the purchase money of a valuable property should be paid in full in cash at the sale, would be an extraordinary and unreasonable condition, and might vitiate the sale, or render it abortive.

After a valid sale, under a power, the mortgagee conveys the property by a deed which recites the power, and the fact that default of payment has occurred whereby the exercise of the power has become proper. The conveyance should also contain a covenant by the mortgagee that default has occurred such as would justify such exercise. The disposal of the surplus purchase money is a matter which requires care. Liens upon the land subsequent to the mortgages must be

paid in the same priority as that in which they bound the premises before the sale. In this matter the services of a professional man will generally be found necessary.

### FORMS.

#### *Ontario Statutory Short Form of Mortgage.*

This indenture made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, in pursuance of the Act respecting Short Forms of Mortgages, between (here insert the names of parties, and recitals, if any), witnesseth that in consideration of \_\_\_\_\_ of lawful money of Canada, now paid by the said (mortgagee or mortgagees) to the said (mortgagor or mortgagors) the receipt whereof is hereby acknowledged, the said (mortgagor or mortgagors) doth (or do) grant and mortgage unto the said (mortgagee or mortgagees) his (her or their) heirs and assigns forever all (parcels). And the said (A. B.), wife of the said mortgagor, hereby bars her dower in the said lands. Provided this mortgage to be void upon payment of (amount of principal money) of lawful money of Canada, with interest at (here specify the rate of interest) per cent. as follows: (here set out the terms of re-payment) and taxes and performance of statute labour. The said mortgagor covenants with the said mortgagee, That the mortgagor will pay the mortgage money and interest, and observe the above proviso; That the mortgagor has a good title in fee simple to the said lands; And that he has the right to convey the said lands to the said mortgagee; And that on default, the mortgagee shall have quiet possession of the said lands, free from all incumbrances; And that the said mortgagor will execute such further assurances of the said lands as may be requisite; And also that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made, at the expense of the mortgagee; And that the said mortgagor has done no act to encumber the said lands; And that the said mortgagor will insure the buildings on the said lands, to the amount of not less than \$ \_\_\_\_\_ currency; And the said mortgagor doth release to the said mortgagee, all his claims upon the said lands: subject to the said proviso. Provided that the said mortgagee, on default of payment for (three) months, may on (one month's) notice, enter on, and lease, or sell, the said lands. Provided that the mortgagee may distrain for arrears of interest. Provided that in default of the payment of the interest hereby secured, the principal hereby secured, shall become payable. Provided that until default of payment, the mortgagor shall have quiet possession of the said lands.

In witness whereof, the said parties hereto, have hereunto set their hands and seals.

Signed, sealed and delivered  
in the presence of  
Y. Z.

A. B. [L.s.]  
C. D. [L.s.]  
E. F. [L.s.]

*Affidavit of Execution of above.*

County of \_\_\_\_\_, to wit: I, Y. Z., of, &c., make oath and say:---

1st. That I was personally present and did see the annexed (or within) mortgage, (and duplicate, if any, according to the fact,) duly signed, sealed and executed by A. B., C. D. and E. F., the parties thereto

2nd. That the said mortgage, (and duplicate, if any, according to the fact,) were executed at (state here the place of execution.)

3rd. That I know the said parties (or one, or more of them, according to fact.)

4th. That I am a subscribing witness to the said mortgage, (and duplicate, according to the fact.)

Y. Z.

Sworn before me at  
\_\_\_\_\_ in the county of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 18 \_\_\_\_\_  
L. M.

A Commissioner, &c.

*Ontario Statutory Discharge of Mortgage.*

To the Registrar of the county of \_\_\_\_\_, I, E. F., of, &c., do certify that A. B. of, &c., hath satisfied all moneys due on, or to grow due on (or hath satisfied the sum of \$ \_\_\_\_\_, mentioned in, a certain mortgage made by A. B., of, &c., to me. (or if the mortgage has been assigned, to G. H. of, &c.,) which mortgage bears date the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_; and was registered in the Registry office for the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_, at \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_ noon, in liber \_\_\_\_\_ for \_\_\_\_\_, as number \_\_\_\_\_. [If the mortgage has been assigned, go on to say, "and which mortgage was assigned to me by indenture, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, made between, &c., (stating the names of the parties to the assignment) registered in the said Registry office, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, at \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_ noon, in liber \_\_\_\_\_ for \_\_\_\_\_, as No. \_\_\_\_\_"; and so on, in the same manner, with reference to all assign-

ments, where there are several. If the mortgage has not been assigned, state the fact thus: "and that the said mortgage has not been assigned." And that I am the person entitled by law to receive the money, and that such mortgage, (or such sum of money as aforesaid; or such part of the lands as is herein particularly described, that is to say: (*here set out the lands intended to be discharged, if a part only of the lands is to be released,*) is therefore discharged.

Witness my hand this                      day of                      , A. D. 18                      A. B.

Signed in the presence of

Y. Z.

(*One witness is sufficient*) of, &c., (*here state residence and occupation*)

(*An affidavit of execution of the discharge, unless the latter be made by a corporation, must be made by the witness; it will be in a form similar to that of the execution of the mortgage.*)

### Assignment of Mortgage.

This indenture made the                      day of                      , 18                      , Between E. F., of, &c., (hereinafter called the assignor) of the first part; and G. H., of, &c., (hereinafter called the assignee) of the second part. Whereas, by indenture of mortgage, bearing date the                      day of                      , 18                      , made between one A. B., of, &c., of the first part; C. D., (wife of the said A. B., and for the purpose of barring her dower) of the second part; and the said E. F., of the third part; the said A. B. did convey and assure the lands and premises hereinafter described, unto the said E. F., his heirs, executors, administrators and assigns, subject to a proviso for redemption on payment of \$                      , and interest thereon, at the rate of                      per cent. per annum, on the days and times, and in the manner, in the said indenture of mortgage mentioned. And whereas, there is now due upon the said mortgage, for principal money, the sum of \$                      ; and for interest, the sum of \$                      . Now this indenture witnesseth, that in consideration of the sum of \$                      , of lawful money of Canada, now paid by the said assignee to the said assignor, the receipt whereof is hereby acknowledged, He, the said assignor, doth hereby grant, assign, and transfer unto the said assignee, his heirs, executors, administrators and assigns, the said indenture of mortgage, and the principal and interest moneys thereby secured, and the lands and premises thereby conveyed: to wit, All and singular (*here describe the premises*). To have, hold, receive and take, the said indenture of mortgage, and the principal and interest moneys thereby secured, and the lands and premises thereby conveyed unto the said assignee, his heirs, executors, administrators

and assigns, to and for his and their sole and only use: subject nevertheless to the proviso for redemption in the said mortgage contained. And for the better enabling the said assignee, his executors, administrators and assigns, to recover and receive the said principal moneys and interest, from the said A. B., his executors or administrators, he the said assignor doth hereby nominate and appoint the said assignee, his executors, administrators and assigns, to be the true and lawful attorney and attorneys of him the said assignor, his executors or administrators, for him, the said assignor, his executors or administrators, and in his, or their, names or name, but at the cost and charges of the assignee, his executors, administrators or assigns, to sue for and recover the said principal moneys and interest, in any Court of Law or Equity; and on receipt or recovery, to give good and sufficient discharges; and generally to do, and execute, all such acts, deeds, matters and things, as may be requisite and necessary, for the recovery of the said mortgage money and interest. And the said assignor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said assignee, his executors, administrators and assigns, that the said indenture of mortgage is a good, valid and subsisting security, free from all incumbrances; and not discharged or released; and that the principal moneys and interest hereinbefore mentioned, are now justly due and owing upon the security of the said mortgage; and that the said assignor has a good right to assign and transfer the said mortgage; and will not at any time hereafter release or discharge the same, without the consent of the said assignee, his executors, administrators or assigns; and that the said assignor, his heirs, executors or administrators, will at all times, on the request, but at the costs and charges of the assignee, his executors, administrators and assigns, execute such further assignments or assurances of the said indenture, and the moneys thereby secured, and the lands therein comprised, as may be necessary; and the said assignee doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the assignor, his heirs, executors and administrators, that he the said assignee, his executors or administrators, in case he or they shall act upon the power of attorney hereinbefore contained, will save harmless, and indemnify, the said assignor, his heirs, executors and administrators, of and from all costs, charges and expenses, to which he or they may become liable, or be put unto, in consequence thereof.

In witness whereof, the parties to these presents, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of  
Y. Z.

E. F. [L.S.]  
G. H. [L.S.]



*Mortgage of Lease.*

This Indenture, made the       day of       , 18   , Between A. B., of, &c., of the first part, and C. D., of, &c., of the second part. Whereas, by an indenture of Lease, bearing date on or about the day of       , 18   , and made between, &c., The said lessor therein named did demise and lease unto the said lessee therein named, his executors, administrators and assigns, All and singular that certain parcel or tract of land and premises situate, lying and being, &c., (*set out the lands*) To hold the same, with their appurtenances, unto the said lessee, his executors, administrators and assigns from the       day of       , 18   , for and during the term of       years from thence next ensuing, and fully to be complete and ended, at the yearly rent of \$       , and under and subject to the lessee's covenants and agreements in the said Indenture of Lease reserved and contained.

Now this Indenture witnesseth, that in consideration of the sum of \$       , of lawful money of Canada, now paid by the said party of the second part to the said party of the first part, (the receipt whereof is hereby acknowledged), He, the said party of the first part, Doth hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns, All and singular the said parcel or tract of land, and all other the premises comprised in and demised by the said hereinbefore in part recited Indenture of Lease: Together with the said Indenture of Lease, and all benefit and advantage to be had or derived therefrom: To have and to hold the same, with the appurtenances thereunto belonging, unto the said party of the second part, his executors, administrators and assigns, from henceforth for and during all the residue of the said term granted by the said Indenture of Lease, and for all other the estate, term, right of renewal (if any), and other the interest of the said party of the first part therein. Subject to the payment of the rent, and the observance and performance of the lessee's covenants and agreements, in the said Indenture of Lease reserved and contained; and to the proviso for redemption hereinafter contained.

Provided always, that if the said party of the first part, his executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the full sum of \$       , with interest for the same, at       per cent. per annum, on the days and times and in manner following, that is to say, (*here specify terms of payment*) without making any deduction, defalcation or abatement thereout, on any account whatsoever, then these presents, and every clause, covenant, matter and thing herein contained, shall cease, determine and be absolutely void to all intents and purposes whatsoever, as if the same had never been executed.

And the said party of the first part doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to

and with the said party of the second part, his executors, administrators and assigns, in manner following, that is to say:

That he, the said party of the first part, his executors and administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the said principal sum and interest in the above proviso mentioned, at the times and in manner hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents.

And that the said hereinbefore in part recited Indenture of Lease is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting lease in the law, and not surrendered, forfeited or become void or voidable: and that the rent and covenants therein reserved and contained have been duly paid and performed by the said party of the first part, up to the day of the date thereof.

And that the said party of the first part now hath in himself good right, full power, and lawful and absolute authority to assign the said lands and premises in manner aforesaid, and according to the true intent and meaning of these presents.

And that in case of default in payment of the said principal money or interest, or any part thereof, contrary to the proviso and covenant aforesaid, it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon and hold and enjoy the said premises for the residue of the term granted by the said Indenture of Lease, and any renewal thereof (if any), for their own use and benefit, without the let, suit, hindrance, interruption, or denial of the said party of the first part, his executors, administrators and assigns, or any other persons whomsoever; and that free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise, by and at the expense of the said party of the first part, his executors and administrators, well and effectually saved, defended and kept harmless of, from and against all former and other gifts, grants, bargains, sales, leases, and other incumbrances whatsoever.

And that the said party of the first part, his executors, administrators and assigns, and all other persons claiming any interest in the said premises, shall and will, from time to time, and at all times hereafter, so long as the said principal sum or any part thereof shall remain due and owing on this security, at the request and costs of the said party of the second part, his executors, administrators or assigns, make, do and execute, all such further assignments and assurances in the law of the said premises for the residue of the said term, and any renewal thereof (if any), subject to the proviso aforesaid, as by the said party of the second part, his executors, administrators or assigns, or his or their counsel in the law, shall be reasonably advised or required.

And that the said party of the first part, his executors, administrators or assigns, shall and will, from time to time, until default in

payment of the said principal sum or the interest thereof, and until the said party of the second part shall enter into possession of the said premises as aforesaid, well and truly pay, or cause to be paid, the said yearly rent by the said Indenture of Lease reserved, and all taxes payable on the said premises, and perform and keep all the lessee's covenants and agreements in the said lease contained, and indemnify and save harmless the said party of the second part therefrom, and from all loss, costs, charges, damages, and expenses in respect thereof.

And also shall and will, from time to time, and at all times hereafter, so long as the said principal money and interest, or any part thereof, shall remain due on this security, insure and keep insured the buildings erected or to be erected on the land hereby assigned, or any part thereof, against loss or damage by fire, in some Insurance Office, to be approved of by the party of the second part, in the full amount hereby secured, at the least, and, at the expense of the said party of the first part, immediately assign the policy, and all benefit thereof to the said party of the second part, his executors, administrators and assigns, as additional security for the payment of the principal money and interest hereby secured; and that in default of such insurance it shall be lawful for the said party of the second part, his executors, administrators or assigns, to effect the same, and the premium or premiums paid therefor shall be a charge or lien on the said premises hereby assigned, which shall not be redeemed or redeemable until payment thereof, in addition to the said principal money and interest as aforesaid.

Provided, lastly, that until default in payment of the said principal money and interest hereby secured, it shall be lawful for the said party of the first part, his executors, administrators or assigns, to hold, occupy, possess and enjoy the said lands and premises hereby assigned, with the appurtenances, without any molestation, interruption or disturbance of, from or by the said party of the second part, his executors, administrators or assigns, or any person or persons claiming or to claim by, from, through, under or in trust for him, them, or any of them.

In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered }  
in the presence of  
Y. Z.

A. B. [L. S.]  
C. D. [L. S.]

Received on the date hereof, the sum of \$  
full consideration above mentioned.

, being the

A. B.

Witness,  
Y. Z.

## NATURALIZATION AND ALIENS.

AN ALIEN is one born outside British Dominions, or the subject or citizen of a foreign Government or State, who has not been naturalized.

*Naturalization* is the process whereby an alien becomes a citizen and entitled to the privileges of one native-born.

In Ontario and Manitoba, by Provincial Statutes, real and personal property of every kind may be acquired, held and disposed of by an alien, in the same manner as though he were a British subject; aliens may not, however, sit upon juries, or hold municipal or legislative offices.

The law upon this subject is now contained in "The Naturalization Act, Canada, 1881," which came into force in the Dominion upon the 4th July, 1883. By this statute various important changes are made in the law theretofore existing.

*Expatriation* takes place when a person loses his nationality, and abjures his allegiance to the country of his birth by becoming the citizen of another country. Under the common law of England, and until a recent period, it was held impossible for a British subject, by any act of his, to expatriate himself; but this has, of recent years, been permitted by statute, if the purpose for which it is sought is not unlawful nor in fraud of his duties in the country of his origin.

*Repatriation* occurs when an expatriated person regains his original nationality.

The most important clauses of the above mentioned statute are as follows:

## INTERPRETATION CLAUSE.

1. In this Act, if not inconsistent with the context or subject-matter thereof,—

"Disability" means the status of being an infant, lunatic, idiot, or married woman :

"Officer in the Diplomatic Service of Her Majesty" means any Ambassador, Minister or Chargé d'Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Chargé d'Affaires, or Secretary of Legation to execute any duties imposed by *The Naturalization Act, 1870*, (Imperial) or an officer in the Diplomatic Service of Her Majesty :

"Officer in the Consular Service of Her Majesty" means and includes Consul-General, Vice-Consul and Consular-Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, or Consular Agent :

"Oath" includes affirmation in the case of a person allowed by law to affirm in judicial cases :

"County" includes a union of counties, and a judicial district or other judicial division :

"Alien" includes a statutory alien :

"Subject" includes a citizen, when the foreign country referred to is a republic.

## STATUS OF ALIENS IN CANADA.

4. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject : Provided,—

1. That this section shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise ;

2. That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him ;

3. That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the coming into force of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act :—

4. That this section shall not qualify an alien to be the owner of a British ship.

5. Where Her Majesty has entered into a convention with any foreign State to the effect that the subjects of that State who have

been naturalized as British subjects may divest themselves of their status as British subjects, and where Her Majesty, by Order in Council, passed under the third section of *The Naturalization Act, 1870*, (Imperial) has declared that such convention has been entered into by Her Majesty,—then, from and after the date of such Order in Council, any person being originally a subject of the State referred to in such Order, who has been naturalized as a British subject within Canada may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall, within Canada, be regarded as an alien, and as a subject of the State to which he originally belonged as aforesaid.

6. A declaration of alienage may be made as follows:—If the declarant be in the United Kingdom, in the presence of any Justice of the Peace; if elsewhere in Her Majesty's dominions, in the presence of any Judge of any court of civil or criminal jurisdiction, or of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

7. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became, under the law of any foreign State, a subject of such State, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall within Canada cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall within Canada cease to be a British subject.

8. From and after the coming into force of this Act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

#### EXPATRIATION.

9. Any British subject who has, at any time before, or may at any time after the coming into force of this Act, when in any foreign State, and not under any disability, voluntarily become naturalized in such State, shall, from and after the time of his so having become naturalized in such foreign State, be deemed within Canada to have ceased to be a British subject, and be regarded as an alien: Provided,

1. That where any British subject has before the coming into force of this Act voluntarily become naturalized in a foreign State and yet is desirous of remaining a British subject within Canada, he may, at any time within two years after the coming into force of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration (hereinafter referred to as a declaration of British nationality) being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State in which he has been naturalized, be deemed within Canada to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

2. A declaration of British nationality may be made, and the oath of allegiance be taken as follows:—If the declarant be in the United Kingdom in the presence of a Justice of the Peace; if elsewhere in Her Majesty's dominions in the presence of any Judge of any court of civil or criminal jurisdiction, or of any Justice of the Peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

#### NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

10. An alien who, within such limited time before taking the oaths or affirmations of residence and allegiance and procuring the same to be filed of record as hereinafter prescribed, as may be allowed by order or regulation of the Governor in Council, has resided in Canada for a term of not less than three years, or has been in the service of the Government of Canada, or of the Government of any of the Provinces of Canada, or of two or more of such governments, for a term of not less than three years, and intends, when naturalized, either to reside in Canada, or to serve under the Government of Canada or the government of one of the Provinces of Canada, or two or more of such governments, may take and subscribe the oaths of residence and allegiance or of service and allegiance in form A in the schedule hereto or to the like effect, and apply for a certificate in the form B in said schedule.

11. Every such oath shall be taken and subscribed by such alien, and may be administered to him by any of the following persons, viz.:—A judge of a court of record in Canada, a commissioner authorized to administer oaths in any court of record in Canada, a commissioner authorized by the Governor General to take oaths under this Act, a Justice of the Peace of the county or district where the alien resides, a Notary Public, a Stipendiary Magistrate, a Police Magistrate.

**12.** The alien shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as the person before whom he takes the oath aforesaid may require; and such person, on being satisfied with such evidence, and that the alien is of good character, shall grant to such alien a certificate in the form B in the schedule hereto or to the like effect.

**13.** Such certificate shall be presented,—

*In Ontario*, to the Court of General Sessions of the Peace of the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sitting in such county;

*In Quebec*, to the Circuit Court in and for the circuit within the jurisdiction of which the alien resides;

*In Nova Scotia*, to the Supreme Court or to the Circuit Court during its sittings in the county within the jurisdiction of which the alien resides, or to the County Court of such county;

*In New Brunswick*, to the Supreme Court or the Court of Assize or *Nisi Prius* during its sittings in the county within the jurisdiction of which the alien resides, or to the County Court of such county;

*In British Columbia*, to the Supreme Court during its sittings in the electoral district within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such electoral district, or to the County Court of such electoral district;

*In Manitoba*, to the Court of Queen's Bench during its sittings in the county within the jurisdiction of which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county;

*In Prince Edward Island*, to the Supreme Court during its sittings in the county within which the alien resides, or to the Court of Assize or *Nisi Prius* during its sittings in such county, or to the County Court of such county,—

In open court, on the first day of some general sitting of such court; and thereupon such court shall cause the same to be openly read in court; and, if during such sitting the facts mentioned in such certificate are not controverted, or any other valid objection made to the naturalization of such alien, such court, on the last day of such sitting, shall direct that such certificate be filed of record in the court.

**14.** In the North-West Territories and in the District of Keewatin, such certificate shall be presented to such authorities or persons as may be provided by order or regulation of the Governor-General in Council, and thereupon such authority or person shall take such proceedings with respect to such certificate, and shall cause the same to be filed of record in such way as may be provided by such order or regulation.

**15.** The alien shall, after the filing of such certificate, be entitled, under the seal of the Court if such certificate has been presented to



a Court, to a certificate of naturalization in the form C in the schedule hereto annexed or to the like effect; and if the certificate has been presented to an authority or person, as provided by order or regulation of the Governor-General in Council, the alien shall be entitled to receive from such authority or person a certificate of naturalization authenticated as may be provided by such order or regulation.

**16.** The certificate granted to an alien who applies for naturalization on account of service under the Government, as provided by the tenth section hereof, shall be filed of record in the office of Her Majesty's Secretary of State for Canada; and thereupon the Governor-General in Council may authorize the issue of a certificate of naturalization to such alien in the form D in the schedule hereto, or to the like effect.

**17.** An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural born British subject is entitled or subject within Canada, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

**18.** A special certificate of naturalization may, in manner aforesaid, be granted to any person with respect to whose nationality as a British subject a doubt exists, and such certificate may specify that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be deemed a British subject; and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject. Such special certificate may be in the form E in the schedule hereto annexed, or to the like effect.

**19.** An alien who has been naturalized previously to the coming into force of this Act may apply for a certificate of naturalization under this Act, and such certificate may be granted to such naturalized alien upon the same terms and subject to the same conditions upon which such certificate might have been granted if such alien had not been previously naturalized.

**20.** A natural born British subject who has become an alien in pursuance of this Act or of any Act or law in that behalf, and is, in this Act, referred to as a "statutory alien," may, upon the same terms and subject to the same conditions as are required in the case of an alien applying for a certificate of naturalization, apply to the

proper Court or authority or person in that behalf for a certificate, hereinafter referred to as a "certificate of re-admission to British nationality," re-admitting him to the status of a British subject within Canada. Such certificate may be in the form F in the schedule annexed, or to the like effect.

**21.** A copy of the certificate of naturalization may be registered in the Land Registry Office of any county or district or registration division within Canada, and a copy of such registry, certified by the registrar or other proper person in that behalf, shall be sufficient evidence of the naturalization of the person mentioned therein, in all courts and places whatsoever.

**22.** The clerk of the court by which the certificate of naturalization is issued, shall, for all services and filings in connection with such certificate, be entitled to receive from such person the sum of twenty-five cents, and no more; and no further or other fee shall be payable for or in respect of such certificate. The registrar shall, for recording a certificate of naturalization be entitled to receive from the person producing the same for registry, the sum of fifty cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more.

**23.** A statutory alien to whom a certificate of re-admission to British nationality within Canada has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject within Canada,—with this qualification, that within the limits of the foreign State of which he became a subject he shall not be deemed to be a British subject within Canada, unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty or convention to that effect.

**24.** Where any foreign State has, before or after the coming into force of this Act, entered into a convention with Her Majesty to the effect that the subjects of that State who have been naturalized as British subjects may divest themselves of their status as subjects of such foreign State, and where such convention or the laws of such foreign State require a residence in Canada of more than three years or a service under the Government of Canada or of any of the Provinces of Canada, or of two or more of such Provinces, of more than three years, as a condition precedent to such subjects divesting themselves of their status as such foreign subjects—an alien being a subject of such foreign State who desires to divest himself of his status as such subject, may, if at the time of taking the oath of residence or service he has resided or served the length of time required by such convention or by the laws of the foreign State, instead of taking the oath shewing three years residence or service, take an oath shewing residence or service for the length of

time required by such convention or by the laws of the foreign State; and the certificate to be granted to the alien under the twelfth section hereof shall state the period of residence or service sworn to. The certificate of naturalization shall likewise state the period of residence or service sworn to, and the statement in such certificate of naturalization shall be sufficient evidence of such residence or service in all courts and places whatsoever.

**25.** An alien who, either before or after the coming into force of this Act, has, whether under this Act or otherwise, become entitled to the privileges of British birth in Canada, and who is a subject of a foreign State with which a convention to the effect above mentioned has been entered into by Her Majesty, and who desires to divest himself of his status as such subject, and who has resided or served the length of time required by such convention or by the laws of the foreign State, may take the oath of residence or service shewing residence or service for the length of time required by such convention or by the laws of the foreign State, and apply for a certificate (or a second certificate, as the case may be) of naturalization under this Act.

#### NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

**26.** A married woman shall, within Canada, be deemed to be a subject of the State of which her husband is for the time being a subject.

**27.** A widow, being a natural born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality, within Canada, in manner provided by this Act.

**28.** Where the father, being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother, who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall, within Canada, be deemed to be a subject of the State of which the father or mother has become a subject, and not a British subject.

**29.** Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality within Canada, every child of such father or mother who during infancy has become resident within Canada with such father or mother, shall be deemed to have resumed the position of a British subject within Canada, to all intents.

**30.** Where the father, or the mother being a widow, has obtained a certificate of naturalization within Canada, every child of such father or mother who during infancy has become resident with such father or mother within Canada shall, within Canada, be deemed to be a naturalized British subject.

**31.** Nothing in this Act contained shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the coming into force of this Act, or affect such estate or interest to her prejudice.

**32.** The Governor-General in Council may by regulation provide for the following matters:—

1. The form and registration of declarations of British nationality;
2. The form and registration of certificates of naturalization in Canada;
3. The form and registration of certificates of re-admission to the British nationality within Canada;
4. The form and registration of declarations of alienage;
5. The transmission to Canada for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act, out of Canada, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of Canada in pursuance of or for the purpose of carrying into effect the provisions of this Act;
6. With the consent of the Treasury Board, the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act;
7. The persons by whom the oaths may be administered under this Act;
8. Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested;
9. The registrations of such oaths;
10. The persons by whom certified copies of such oaths may be given;
11. The transmission to Canada for the purpose of registration or safe keeping, or of being produced as evidence, of any oaths taken in pursuance of this Act out of Canada, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of Canada in pursuance of this Act;
12. The proof, in any legal proceeding, of such oaths;
13. With the consent of the Treasury Board, the imposition and application of fees in respect of the administration or registration of any such oath.

The Governor-General in Council, by a further regulation, may repeal, alter or add to any regulation previously made by him in pursuance of this section. Any regulation made by the Governor-General in Council in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act.

#### MISCELLANEOUS.

**37.** Where any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

**38.** Each and every person who, being by birth an alien, had, on or before the coming into force of this Act, become entitled to the privileges of British birth, within any part of Canada, by virtue of any general or special Act of Naturalization in force in such part of Canada, shall hereafter be entitled to all the privileges by this Act conferred on persons naturalized under this Act.

**41.** Every person who, being by birth an alien, did, prior to the first day of January, 1868, take the oaths of residence and allegiance required by the naturalization laws then in force in that one of the Provinces now forming the Dominion of Canada, in which he then resided, shall, within Canada, be admitted to all the rights and privileges of a natural born British subject conferred upon naturalized persons by this Act; and the certificate of the judge, magistrate, or other person before whom such oaths were taken and subscribed, shall be evidence of his having taken them; or he may take and subscribe the oath in form G in the schedule hereto before some judge, justice, or person authorized to administer the oaths of residence and allegiance under this Act, in the county or district in which he resides.

**42.** All aliens who had their settled place of abode in either of the late Provinces of Upper Canada or Lower Canada or Canada, or in Nova Scotia or New Brunswick, on or before the first day of July, A. D. 1867, or in Rupert's Land or the North-West Territories on or before the fifteenth day of July, A.D. 1870, or in British Columbia, on or before the 20th day of July A.D. 1871, or in Prince Edward Island, on or before the first day of July, A.D. 1873, and who are still residents in Canada, shall be deemed, adjudged, and taken to be, and to have been entitled to all the privileges of British birth within Canada, as if they had been natural born subjects of Her Majesty, subject to the following provision, that is to say:—That no such person (being a male) shall be entitled to the benefit of this Act, unless nor until he shall take the oaths of allegiance

and residence in the form prescribed by this Act, before some Justice of the Peace or other person authorized to administer oaths under this Act.

43. The oaths taken under the last preceding section shall be filed of record,—if the person making them resides in the Province of Ontario, with the Clerk of the Peace of the county in which he resides,—if he resides in the Province of Quebec, with the Clerk of the Circuit Court of the circuit within which he resides,—if he resides in Nova Scotia, with the Clerk of the Supreme Court,—and if he resides in New Brunswick, with the Clerk of the Supreme Court,—if he resides in British Columbia or Prince Edward Island, with the Clerk of the Supreme Court,—if he resides in Manitoba, with the Clerk of the Court of Queen's Bench, or with the Clerk of the County Court of the county in which he resides,—if he resides in the North-West Territories or in the District of Keewatin, with such person or authority as may be provided by order or regulation of the Governor-General in Council; and upon its being so filed, the person making it shall be entitled to the benefit of this Act and of the privileges of British birth within Canada, and shall also, upon payment of a fee of twenty-five cents, be entitled to a certificate from the person with whom the oaths have been filed, in the form H of the schedule hereto, or to the like effect; and the production of such certificate shall be *prima facie* evidence of his naturalization under this Act, and that he is entitled to and enjoys all the rights and privileges of a British subject.

44. After the coming into force of this Act, no alien shall be naturalized within Canada, except under the provisions of this Act. (Empowers the Governor-General to provide by regulation certain forms, etc.)

## SCHEDULE OF FORMS.

### A. (See Section 10.)

#### THE NATURALIZATION ACT, CANADA, 1881.

##### Oath of Residence.

I, A. B., do swear (*or, being a person allowed by law to affirm in judicial cases, do affirm*) that, in the period of years preceding this date I have resided three (*or five, as the case may be*) years in the Dominion of Canada with intent to settle therein, without having been, during such three years (*or five years, as the case may be*), a stated resident in any foreign country. So help me God.

Sworn before me at  
day of  
on the

A. B.

## THE NATURALIZATION ACT, CANADA, 1881.

*Oath of Service.*

I, A. B., do swear (*or*, being a person allowed by law to affirm in judicial cases, do affirm), that in the period of \_\_\_\_\_ years preceding this date, I have been in the service of the Government of Canada (*or*, of the Government of the Province of \_\_\_\_\_, in Canada, *or as the case may be*) for the term of three years, and I intend, when naturalized, to reside in Canada (*or to serve under the government of \_\_\_\_\_ as the case may be*).

Sworn before me at  
on the  
day of

A. B.

## THE NATURALIZATION ACT, CANADA, 1881.

*Oath of Allegiance.*

I, A. B., do sincerely promise and swear (*or*, being a person allowed by law to affirm in judicial cases, affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, a lawful Sovereign of the United Kingdom of Great Britain and Ireland and of the Dominion of Canada, dependent on and belonging to the said Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever which shall be made against Her Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs or Successors, all treasons or traitorous conspiracies or attempts which I shall know to be against Her or any of them; and all this I do swear (*or affirm*) without any equivocation, mental evasion or secret reservation. So help me God.

Sworn before me at  
this  
day of

A. B.

## B. (See Section 12.)

## THE NATURALIZATION ACT, CANADA, 1881.

*Certificate under Section 12.*

I, C. D. (name and description of the person before whom the oaths have been taken—See Section 11), do certify that A. B., an alien, on the \_\_\_\_\_ day of \_\_\_\_\_, subscribed and took before me the oaths

(or affirmations) of residence and allegiance, (or service and allegiance, as the case may be), authorized by the tenth section of *The Naturalization Act, Canada, 1881*, and therein swore (or affirmed) to a residence in Canada (or service, &c.,) of \_\_\_\_\_ years, that I have reason to believe and do believe that the said A. B., within the period of \_\_\_\_\_ years preceding the said day, has been a resident within Canada for three or five, (as the case may be) years (or has been in the service of the Government of Canada for three years; or, as the case may be) that the said A. B. is a person of good character, and that there exists, to my knowledge, no reason why the said A. B. should not be granted all the rights and capacities of a natural born British subject.

Dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_

C. D.

*If the above Certificate be applied for by a person with respect to whose nationality a doubt exists, and who desires a special Certificate of Naturalization under section eighteen, add the following :—*

"I further certify that the said A. B. has doubts as to his nationality as a British subject, and desires a special certificate of naturalization under section eighteen of said Act."

*If the above certificate be applied for by a person, previously a natural born British subject, but who became an alien by naturalization, an appropriate statement to that effect should be inserted in the certificate.*

### C. (See Section 15.)

#### THE NATURALIZATION ACT, CANADA, 1881.

##### *Certificate of Naturalization.*

Dominion of Canada. }  
Province of \_\_\_\_\_ }

In the (name of Court) :

Whereas, A. B., of, &c. (describing him as formerly of such a place, in such a foreign country, and now of such a place in Canada, and adding his occupation or addition) has complied with the several requirements of *The Naturalization Act, Canada, 1881*, and has duly resided in Canada for the period of (three or five, as the case may be) years. And whereas the certificate granted to the said A. B. under the twelfth section of the said Act has been duly read in open Court, and thereupon, by order of the said Court, has been filed of record in the same pursuant to the said Act. (¶) This is therefore to certify to all whom it may concern that under and by virtue of the said Act, A. B. has become naturalized as a British subject, (§) and is,



within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject (or citizen) previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject (or citizen) of that State in pursuance of the laws thereof or in pursuance of a treaty or convention to that effect.

Given under the seal of the said Court, this                      day of  
                , one thousand eight hundred and

E. F.

**Judge, Clerk (or other proper officer of the Court.)**

*This form may be altered so as to apply to the North-West Territories or District of Keewatin.*

**D. (See Section 16.)**

THE NATURALIZATION ACT, CANADA, 1881.

**Certificate of Naturalization to a person after service under Government.**

Whereas A. B., of *(describing him, and adding his occupation or addition)* has complied with the several requirements of *The Naturalization Act, Canada, 1881*, and has been in the service of the Government of Canada, *(or, as the case may be)* for a term of not less than three years, and intends, when naturalized, to reside in Canada *(or to serve under the Government of \_\_\_\_\_, as the case may be)*; and whereas the certificate granted to the said A. B., under the twelfth section of the said Act, has been duly filed of record in the office of Her Majesty's Secretary of State for Canada pursuant to the said Act; and whereas the Governor General in Council has duly authorized the issue of this certificate of naturalization; This is therefore to certify to all whom it may concern that under and by virtue of the said Act the said A. B. has become naturalized as a British subject, and is, within Canada, entitled to all political and other rights, powers and privileges, and is subject to all obligations to which a natural born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign State of which he was a subject *(or citizen)* previous to the date hereof, be deemed to be a British subject unless he has ceased to be a subject *(or citizen)* of that State in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect.

Given under my hand, this

**day of**

*Secretary of State of Canada.*

## E. (See Section 18.)

*Special Certificate of Naturalization to a person with respect to whose nationality a doubt exists.*

THE NATURALIZATION ACT, CANADA, 1881.

*Follow form C. down to the sign ¶—then add :*

And whereas the said A. B. alleges that he is a person with respect to whose nationality as a British subject a doubt exists, and this certificate is issued for the purpose of quieting such doubt, and the application of the said A. B. therefor, and the issuing thereof shall not be deemed to be any admission that the said A. B. was not heretofore a British subject—(then continue the rest of form C. to the end.

*Form D. to be altered in a similar way when necessary.*

## F. (See Section 20.)

*Certificate of re-admission to British Nationality.*

THE NATURALIZATION ACT, CANADA, 1881.

*Formal part as in Form C.*

Whereas A. B., of (describing him as in form C), who alleges that he was a natural born British subject, and that he became an alien by being naturalized as a subject (or citizen) of \_\_\_\_\_ has complied with the several requirements of *The Naturalization Act, Canada, 1881*, and has duly resided in Canada for the period of three (or five, as the case may be) years; and whereas the certificate granted to the said A. B., under the twelfth section of the said Act, has been duly read in open Court, and thereupon by order of the said Court has been filed of record in the same pursuant to the said Act: This is therefore to certify to all whom it may concern that under and by virtue of the said Act the said A. B., from the date of this certificate, but not in respect of any previous transaction, is re-admitted to the status of a British subject—(then follow form C. from the sign § to the end.)

*Form D. to be altered in a similar manner when necessary.*

*Where the applicant is a widow, the form must be modified accordingly, and recite that she became an alien by marriage with her late husband L. M., a subject (or citizen) of \_\_\_\_\_*

## G. (See Section 43.)

## THE NATURALIZATION ACT, CANADA, 1881.

I, A. B., of \_\_\_\_\_, do swear (or affirm) that on or about the  
 day of \_\_\_\_\_, one thousand eight hundred and  
 at \_\_\_\_\_, in the (County, etc.) of \_\_\_\_\_, in the Province of  
 \_\_\_\_\_, I did take and subscribe before (a Judge, Magistrate or  
 other person, naming him) the oaths (or affirmations) of residence  
 and allegiance required by the laws respecting the naturalization of  
 aliens then in force in the said Province. So help me God.

Sworn before me at \_\_\_\_\_ }  
 on the \_\_\_\_\_ } A. B.  
 day of \_\_\_\_\_ 18 }

## G. I. (See Section 44.)

## THE NATURALIZATION ACT, CANADA, 1881.

I, A. B., of \_\_\_\_\_, do swear (or affirm) that I had a settled  
 place of abode in (Upper Canada, Lower Canada, Nova Scotia, or  
 New Brunswick, as the case may be) on the first day of July, A. D.  
 1867, (or in Rupert's Land or the North-West Territories, on the  
 fifteenth day of July, A. D. 1870) (or in British Columbia, on the  
 twentieth day of July, A. D. 1871) (or in Prince Edward Island, on  
 the first day of July, A. D. 1873), and I resided therein with intent  
 to settle therein; and I have continuously since resided in the  
 Dominion of Canada. So help me God.

Sworn before me at \_\_\_\_\_ }  
 on the \_\_\_\_\_ } A. B.  
 day of \_\_\_\_\_ 18 }

## H. (See Section 45.)

## THE NATURALIZATION ACT, CANADA, 1881.

I hereby certify that A. B., of \_\_\_\_\_, has filed with me as (Clerk  
 of the Peace \_\_\_\_\_, or as the case may be) the oath (or  
 affirmation), of which the following is a copy:—

(Copy of Oath or Affirmation.)

This certificate is issued pursuant to the forty-fifth section of  
 The Naturalization Act, Canada, 1881, and is to certify to all to  
 whom it may concern that

(Follow Form C.)

REGULATIONS MADE UNDER THE AUTHORITY OF  
THE NATURALIZATION ACT, CANADA, 1881.

1. The time within which an alien's three years residence or service must be had before taking the oaths or affirmations of residence and allegiance, and procuring the same to be filed of record as provided in the tenth section of the said Act, is limited to five years, immediately preceding the taking of such oaths or affirmations.

2. In the North-West Territories and in the District of Keewatin, the certificate mentioned in the twelfth section of the said Act shall be presented to one of the Stipendiary Magistrates of the North-West Territories, who shall take such measures to satisfy himself that the facts stated in the certificate are true, as shall in each case appear to him to be necessary; and when satisfied that the facts stated in the certificate are true, he shall grant to the alien a certificate of naturalization, authenticated under his hand and seal:

Each Stipendiary Magistrate shall keep a record of the certificates presented to and filed with him; also a record of all certificates of naturalization granted by him, of which he is hereby authorized at any time to give a certified copy.

3. The forms of declarations of alienage made in pursuance of the said Act shall be respectively as follows:—

## I.

## THE NATURALIZATION ACT, CANADA, 1881.

*Declaration of Alienage by a Naturalized British Subject.*

I, A. B., of \_\_\_\_\_ having been naturalized as a British subject on the \_\_\_\_\_ of \_\_\_\_\_, 18\_\_\_\_, do hereby, under the provisions of the Order of the Governor-General in Council of the \_\_\_\_\_, and of the treaty between Great Britain and C. D., renounce my naturalization as a British subject, and declare that it is my desire to resume my nationality as a subject (or citizen) of C. D.

Made and subscribed this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, before me, \_\_\_\_\_

(Signed) \_\_\_\_\_ E. F.,  
Justice of the Peace  
(or other official title.)

## J.

## THE NATURALIZATION ACT, CANADA, 1881.

*Declaration of Alienage by a Person born within British Dominions, but also a subject or citizen of a Foreign State by the law thereof.*

I, A. B., of \_\_\_\_\_ being held by the common law of Great Britain to be a natural born subject of Her Britannic Majesty by

reason of my having been born within Her Majesty's dominions, and being also held by the law of C. D. to have been at my birth, and to be still, a subject (or citizen) of C. D., hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject (or citizen) of C. D.

Made and subscribed this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, before  
me, \_\_\_\_\_  
(Signed) A. B.  
(Signed) E. F.  
Justice of the Peace  
(or other official title.)

## K.

## THE NATURALIZATION ACT, CANADA, 1881.

*Declaration of Alienage by a Person who is by origin a British subject.*

I, A. B., of \_\_\_\_\_, having been born out of Her Britannic Majesty's Dominions of a father being a British subject, do hereby renounce my nationality as a British subject.

Made and subscribed this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, before  
me, \_\_\_\_\_  
(Signed) A. B.  
(Signed) G. H.  
Justice of the Peace  
(or other official title.)

## L.

## THE NATURALIZATION ACT, CANADA, 1881.

*Declaration of British Nationality.*

I, A. B., of \_\_\_\_\_, being a natural born subject of Her Britannic Majesty, and having voluntarily become naturalized as a subject (or citizen) of C. D., on the \_\_\_\_\_ of \_\_\_\_\_ 18\_\_\_\_, do hereby renounce such naturalization, and declare that it is my desire to be considered and treated as a British subject.

Made and subscribed this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, before  
me, \_\_\_\_\_  
(Signed) A. B.  
(Signed) E. F.  
Justice of the Peace  
(or other official title.)

4. Every declaration, whether of alienage or British nationality, made in pursuance of the said Act, shall be deposited and registered in the office of the Secretary of State of Canada;

The Secretary of State of Canada, the Under Secretary of State, or the Deputy Registrar General of Canada may give certified copies of any such declaration for the purposes mentioned in the said Act.

5. With the consent of the Treasury Board, the following provision is made in regard to the imposition and application of fees:—

Matter in which fee may be taken.	Amount of fee.	How to be applied.
	\$ cts.	
For taking a declaration, whether of alienage or British nationality .....	0 40	To the Justice or other official taking declaration.
For administering the oath of allegiance .....	0 40	To the Justice, Commissioner, Notary, Stipendiary or other Magistrate administering the oath.
For registration of declaration, with or without the oath of allegiance.....	1 00	Consolidated Revenue of Canada.
For certified copy of declaration, with or without oath.	1 00	Consolidated Revenue of Canada.

Consented to by the Treasury Board.

PRIVY COUNCIL.

OTTAWA, 19th December, 1883.

The foregoing Regulations, made under the authority of the Naturalization Act, Canada, 1881, have been approved by His Excellency the Governor General in Council this 19th day of December, 1883.

JOHN J. MCGEE,  
Clerk, Privy Council.

OTHER FEES NAMED IN STATUTE:

To Clerk of Court on certificate of naturalization .....	\$0 25
To Registrar land registry office for recording ..	0 50
"    for search and certified copy .....	0 25
For certificate under section 43 .....	0 25

## PARTNERSHIP.

A partnership is an association of two or more persons, contributing, in equal or unequal proportions, money, labor, skill, care, attendance or services in the prosecution of some trade or manufacture or business, upon the express, or implied understanding that the profit, or loss, attending the operations, is to be shared among the parties in certain proportions. The capital may be supplied by one alone, and the skill and labor by another alone, or both may furnish both capital and labor. A person under the age of 21 years, being unable to make a valid contract, cannot be in a partnership; nor can an idiot or lunatic, for the same reason; and, as a rule, and in the absence of statutory provision, a married woman cannot, save where her husband is a convicted felon, or an alien enemy and abroad, or where by order of a competent Court she is permitted to do so. The contract of partnership is founded wholly on the consent of parties, and may be created and evidenced by their acts and deeds, and their common participation in the profit and loss of a trade or business, or of a particular speculation or adventure, as well as through the medium of an express contract. If parties are not to share the profit and loss, there can be no partnership as between themselves, whatever may be their apparent situation and position as regards the public. If one man joins another in the furtherance of a particular undertaking, and contributes work and labor, services and skill, towards the attainment of the common object, upon the understanding that the remu-

neration is to depend upon the realization of profits, so that, if the business is a losing business, he is to get nothing, he stands in the position of a partner in the undertaking, and not in that of a laborer or servant for hire. But a person who merely receives out of the profits the wages of labor, or a commission, as a hired servant or agent, such as a factor, foreman, clerk or manager, and who has no interest or property in the capital stock of the business, is not a partner in the concern, although his wages may be calculated according to a fluctuating standard, and may rise and fall with the accruing profits. Statutes of the various Provinces provide for the legal rights of such person.

A partner in a private commercial partnership (not being a public joint-stock company with transferable shares) cannot introduce a stranger into the firm, as a partner, without the consent of all the members of the co-partnership.

Every person who shares in the profits of a business carried on by himself personally, or by others as his agents, is a partner in the business as regards the public and third parties, and is liable as such, whatever may be the private stipulations and agreements between him and the parties who appear to the world as the managers and conductors of the business; because the profits form a portion of the fund on which the creditors have a right to rely for payment.

A *general* partnership is one formed for trade or business generally, without limitations. A *special* partnership is one in which the joint interest extends only to a particular concern, as, for example, in the erection of a hotel. A *limited* partnership is one in which one or more of the partners put in a certain amount of capital,



which is liable for the contracts of the firm, but beyond that amount the party advancing is not liable.

A person who lends his name as a partner, or who transfers his name to continue in the firm after he has actually ceased to be a partner, is still responsible to third persons as a partner.

A partner may buy and sell partnership effects ; make contracts in reference to the business of the firm ; pay and receive money ; draw and endorse and accept bills and notes ; release ordinary partnership debts, payable on demand under seal ; and all acts of such a nature, even though they be upon his own private account, will bind the other partners, if connected with matters apparently having reference to the business of the firm, and transacted with other parties ignorant of the fact that such dealings are for the particular partner's private account. So also the representation, or misrepresentation, of any fact, made in any partnership transaction by one partner, or the commission of any fraud in such transaction, will bind the entire firm, even though the other partners may have no connection with, or knowledge of the same.

A partner will bind the firm by his representations and admissions made to others in the general course of the partnership business, but cannot bind them by deed, unless empowered by deed so to do ; nor by giving guaranties, unless the giving of such is part of the regular business of the firm. He can hire clerks and workmen, but cannot discharge them against the will of his partners. In lawsuits, he may prosecute or defend an action for the firm, but if his partners object to his course they have a right to demand that he shall indemnify them against law costs.

Dormant and secret partners, whose names do not appear to the world, may be made responsible for the engagements of a trading firm of which they are members.

Persons may become clothed with the legal liabilities and responsibilities of partners as regards the public and third parties, by holding themselves out to the world as partners, as well as by contracting the legal relationship of partners among themselves. If a man, therefore, allows himself to be published to the world as a member of a particular firm ; if he permits his name to appear in the partnership name or to be used in the business ; if he suffers it to be exhibited to the public over a shop-window ; or to be written or printed in invoices or bills of parcels or prospectuses : or to be published in advertisements, as the name of a member of the firm, he is an ostensible partner and is chargeable as a partner, although he is not in point of fact a partner in the concern, and has no share or interest in the profits of the business. But if a man's name is used *without* his knowledge or consent, and he is represented by others to be a partner *without* his authority or permission, he cannot, of course, be made responsible as a partner upon the strength of such false and fraudulent representation.

An incoming partner cannot be made responsible for the non-performance of contracts entered into by the firm *before* he became an actual or reputed member of it.

Dormant and secret partners may release themselves from all further liability by a simple withdrawal and relinquishment of their share in the profit and loss of the business ; but, if they are not strictly *secret* as well

as dormant partners, notice of the termination of their connection with the co-partnership must be given. A general notice is sufficient as to all but actual customers : these must have some kind of actual notice.

If no time has been limited for the dissolution of a general trading partnership, it is a partnership at will, and may be dissolved at any time at the pleasure of any one or more of the partners. If the partnership was established by deed, the renunciation and disclaimer of it by the party who withdraws from the firm ought to be made by deed. But if the partnership was contracted *without* deed, or, as it is technically called, by parol, it may be renounced in the same manner. If the partners have agreed that the partnership shall continue for a definite period, it cannot be dissolved before the expiration of the term limited, except on the mutual consent of all the parties, or by the outlawry, felony or death of any one or more of them, or by the decree of a Court of Equity. The Courts will interfere to prevent gross breaches of the partnership agreement on the part of a member, or improper conduct likely to cause great loss to the partnership, and will award injunction or damages; and where these remedies appear insufficient, or other good cause exist, may dissolve the partnership. If a partnership for a definite term has been created by deed, the mutual agreement of the parties to dissolve it must be by deed also. The partnership is dissolved by the death or insolvency of one of the partners; or by an assignment by any partner of his share and interest in the business. A dissolution by one partner is a dissolution as to all.

An executor, administrator or personal representative, continuing in the business after the death of a

partner, is personally responsible as partner for all debts contracted.

Immediately after a dissolution, a notice of the same should be published in the public papers, and in the official *Gazette*, for general information, and a special notice sent to every person who has had dealings with the firm. If these precautions be not taken, each partner will still continue liable for the acts of the others to all persons who have had no notice of the dissolution.

The strictest good faith, and an adherence to the highest principles of business honour and integrity will be required of partners in all dealings between themselves. Where differences of opinion arise as to the conduct of business affairs, the voice of the majority should be allowed to govern; but the majority cannot commit any partner to the risk of transactions outside the scope of the business contemplated in the partnership articles. It will be found a wise course to provide in these articles, very carefully, as to all matters about which there is likely otherwise to be misunderstanding. Each partner is liable to the others for a breach of any express covenant in the articles, and each may sue the others for any balance of profit admitted to be due him, or upon outside transactions unconnected with the partnership. Upon a dissolution, any superior Court having equity jurisdiction will direct the accounts to be taken by one of its officers, if the partners cannot otherwise agree upon a division of profits and losses.

In Ontario and British Columbia, agreements whereby an employee receives a defined share of the net profits or proceeds of a business, in lieu of or in addition to salary or wages, do not create the relation

of partnership, with the rights and liabilities attending such relation. Persons advancing money by way of loan, on similar terms, the widow and children of a deceased partner receiving a portion of the profits by way of annuity, and persons receiving a portion of such profits in consideration of the sale of the good-will of the business are likewise similarly protected.

In Ontario, also, a declaration in writing is required by the R. S. O. cap. 123 to be delivered, by all persons associated in trading, manufacturing or mining partnerships to the Registrar of the County in which such partnerships intend to carry on business. This declaration is in the form of a certificate which must contain the full names, additions and residences of each of the partners, the style of the firm, and the time at which the partnership is to begin and end, and also declare that the persons therein named are the only members of the partnership. A similar declaration must be filed where an alteration takes place in the membership, or place of residence of any member, or in the style of the firm. The original declaration should be filed within six months next after the formation of the partnership. Forms are given in the Act, which should be referred to, as it contains provisions of much importance with reference to the rights of general and special partners, though too extended for a longer notice in this chapter.

In Manitoba, similar provisions are enacted by the Partnerships Act, R. S. M. cap. 17. The declaration is required to be filed with the Prothonotary, or deputy-prothonotary of the Court of Queen's Bench, as the case may be, of the Judicial District in which the principal place of business of the partnership is situate.

The registration of trading partnerships is also required by the statute law of Nova Scotia and New Brunswick, under provisions similar to the above.

In all of the Provinces, limited partnerships may be formed, consisting of general and special partners, the latter of whom are not liable for the debts of the partnership beyond the amount they contribute to the capital. The general partners only can transact the business, sign for the partnership and bind the firm. A certificate in a given form must be signed by all the partners and deposited with the Registrar and Prothonotary. The provisions of the statutes upon these subjects should be carefully followed.

PRINCE EDWARD ISLAND.

By the statute 39 Vict. cap. 8, it is enacted that all persons composing a partnership for the transaction of mercantile, mechanical or manufacturing business, except banking and insurance, shall make and severally sign a certificate in the presence of one or more witnesses, which shall contain the name or firm of the partnership, the names and respective residences of the partners, the general nature of the business to be transacted, and the time when the partnership is to commence, and terminate; to be in the form given in the schedule to the Act. No partnership is deemed to be formed until such certificate is registered in the office of the Prothonotary or Deputy Prothonotary of the Supreme Court, in the county where the business of the partnership shall be carried on; such certificate to be proved on the acknowledgment of the several partners, or on the oath of the subscribing witness, to be

made before such Prothonotary or Deputy Prothonotary, or before a commissioner; and no suit or action can be brought for any debt due the partnership until such certificate is registered.

The partnership is held to continue until a certificate, made and acknowledged as aforesaid by the partner or partners desiring to be discharged from further liability, is registered as in the first instance, declaring such termination or dissolution, or the withdrawal of any of the partners therefrom.

No dissolution (except by operation of law) can take place unless a notice thereof shall be registered in the same manner as the original certificate, and unless such notice shall be published for three weeks in the *Royal Gazette*, and in at least one other newspaper published in the Province.

When a new member is admitted, a certificate must be filed, under the hands of the members of the firm; and no new member shall be considered as between himself and other members as a partner, until such certificate has been filed, although he shall be as fully liable for its debts contracted while he was connected with it.

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#### FORMS.

##### *Partnership Deed.*

Articles of agreement, made the            day of           , 18   ,  
Between A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of,  
&c.

Whereas, the said parties hereto respectively are desirous of entering into a co-partnership in the business of           , at           , for the term and subject to the stipulations hereinafter expressed; Now, therefore, these presents witness that each of them, the said

parties hereto respectively, for himself, his heirs, executors and administrators, hereby covenants with the others and other of them, their and his executors and administrators, in manner following; that is to say:

1st. That the said parties hereto respectively will henceforth be and continue partners together in the said business of , for the full term of years, to be computed from the day of , 18 , if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2nd. That the said business shall be carried on under the style or firm of A. B. & Co.

3rd. That the said partners shall be entitled to the profits of the said business in the proportions following; that is to say (*here state the shares*;) and that all losses in the said business shall be borne by them in the same proportions, unless the same shall be occasioned by the wilful neglect or default of one or either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise.

4th. That the said partners shall each be at liberty, from time to time during the said partnership, to draw out of the said business, weekly, any sum or sums, not exceeding for each the sum of \$ per annum; such sums to be duly charged to each of them respectively, and no greater amount to be drawn by either of the said partners, except by mutual consent.

5th. That all rents, taxes, salaries, wages and other outgoings and expenses incurred in respect of the said business shall be paid and borne out of the profits of the said business.

6th. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept according to the usual and regular course of the said business: which said books shall be open to the inspection of all partners, or their legal representatives; and a general balance or statement of the said accounts, stock in trade, and business, and of accounts between the said partners, shall be made and taken on the day of , in each year of the said term, and oftener, if required.

7th. That the said partners will be true and just to each other in all matters of the said co-partnership, and will at all times during the continuance thereof diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and will not transact or engage in any other business or trade whatsoever; and will not either in the name of the said partnership, or individually in their own names, draw, accept or endorse any accommodation bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing, by which, or by means of which, the said partner-



ship moneys or effects shall be seized, attached, or taken in execution for their own private debts or liabilities; and in case any partner shall fail or make default in the performance of any of the agreements or articles of the said partnership in so far as the same is or are to be observed by him, then the other partners or any one or more of them, may give notice in writing to such partner offending stating in what respects he is deemed to be so in default; and in case such failure or default is not rectified by a time to be specified for that purpose in such notice, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid, be dissolved and determined accordingly.

8th. That in case any of the said partners shall die before the expiration of the term of the said co-partnership, the said partnership shall thereupon cease, and the surviving partner or partners shall within six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership.

In witness whereof, the said parties have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

E. F. [L.S.]

G. H. [L.S.]

### *Dissolution of Partnership.*

#### *By Indorsement.*

We, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us, as Wholesale Grocers, under the within articles of co-partnership, be, and the same is hereby dissolved, except for the purpose of the final liquidation and settlement of the business thereof; and upon such settlement wholly to cease and determine.

In witness whereof, we have hereunto set our hands and seals  
this       day of       , A. D. 18       .

Signed, sealed and delivered  
in the presence of

Y. Z.

A. B. [L.S.]

C. D. [L.S.]

E. F. [L.S.]

G. H. [L.S.]

*Notice thereof.*

Notice is hereby given that the partnership heretofore subsisting between us, the undersigned, as Wholesale Grocers, has been this day dissolved by mutual consent. All debts owing to the said partnership are to be paid to A. B., at \_\_\_\_\_, and all claims against the said partnership are to be presented to the said A. B., by whom the same will be settled.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
 Witness, A. B.  
 Y. Z. C. D.  
 E. F.  
 G. H.

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*Notice when business to be continued.*

Notice is hereby given that the partnership heretofore subsisting between us, the undersigned A. B., C. D., E. F. and G. H., as Wholesale Grocers, was this day dissolved by mutual consent, so far as regards the said A. B. All debts due to the said partnership are to be paid, and those due from the same discharged, at \_\_\_\_\_, where the business will be continued by the said C. D., E. F. and G. H., under the firm of "D. & Co."

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
 Witness, A. B.  
 Y. Z. C. D.  
 E. F.  
 G. H.

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## PATENTS OF INVENTIONS.

The Patent Office in Canada is attached to the Department of Agriculture, and the Minister of Agriculture, for the time being, is the Commissioner of Patents. Patents of inventions are grants by the Crown of the exclusive right to make, use and sell any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement not known and used by others. The principal statute now in force relating to patents is the Dominion Statute, 35 Vict. cap. 26, passed in 1872, with subsequent Acts and amendments. Under the Act, the Commissioner is empowered to make rules and regulations, subject to the approval of the Governor in Council.

Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention thereof, or not being for more than one year previous to his application in public use, or on sale, in Canada, with the consent or allowance of the inventor, may petition for a patent. But if a patent for the invention has been in existence in any other country more than twelve months prior to the application for the patent in Canada, the Canadian inventor is not, under the statute, entitled to a patent: where a foreign patent exists, the Canadian patent must expire at the earliest date at which any foreign patent for the same invention expires. The executors or administrators, or other legal

representatives, of a deceased inventor, or persons to whom he has assigned or bequeathed the right of obtaining the patent, may secure the issue of it.

A patent will issue for the improvement of an invention already patented, but this does not confer upon either holder the right to infringe the patent of the other.

Where joint applications are made, the patent is issued in the name of all the applicants.

No patent will issue for an invention or discovery having an illicit object in view, nor for any mere scientific principle or abstract theorem.

Every application for a patent must be by petition, addressed to the Commissioner of Patents.

Every applicant must make oath, or when entitled by law to make an affirmation instead of an oath, then an affirmation, that he verily believes that he is, or where the inventor is dead, that the person whose assignee or representative he is, is, or was, the inventor of the invention for which the patent is solicited, and that the several allegations in his petition are true and correct. This oath or affirmation may be made before any Justice of the Peace in Canada; or if the applicant is out of Canada at the time, it may be made before a Minister Plenipotentiary, Charged'Affaires, Consul, Vice-Consul, or Consular Agent of the United Kingdom, or any Judge of a Court of Record, or a Notary Public, or the Mayor or other Chief Magistrate of any city, borough or town corporate in the country in which the applicant happens to be.

The petitioner must elect some known and specified place in Canada as his domicile or place of residence, and mention the same in his petition. The petitioner must insert the title or name of his invention, and dis-

tinctly allege all the facts which are necessary to entitle him to a patent. A specification, in duplicate, must accompany the petition, describing the same in such full, clear and exact terms as to distinguish it from all contrivances or processes for similar purposes. It must correctly and fully describe the mode or modes of operating contemplated by the inventor; and state clearly and distinctly the contrivances and things which he claims as new, and for the use of which he claims an exclusive property and privilege; and it must bear the name of the place where made, and date, and be signed by the inventor, if alive, and if not, by the applicant and two witnesses. In the case of a machine, the specification must fully explain the principle and the several modes in which it is intended to apply and work out the same. Where the invention admits of illustration by means of drawings, the applicant must also, with his application, send in drawings, in duplicate, showing clearly all parts of the invention. Each drawing must bear the signature of the applicant, or of his attorney, and contain written references corresponding with the specification; but the Commissioner may, in his discretion, require further drawings, or dispense with any of them; and with the duplicate specification and drawings, and in lieu thereof, may cause copies of the specifications and drawings in print, or otherwise, to be used.

Where the invention admits of it, a working model must also be delivered, unless the Commissioner specially dispenses with it. Specimens of ingredients and composition, where these are the subject of the invention, sufficient in quantity for experiment, must also be delivered to the Commissioner, where they are not explosive or dangerous.

Forms of petition and specification, &c., will be found at the end of this chapter.

The patent, when issued, will grant to the patentee, his executors, administrators, assigns and legal representatives, for the period of time mentioned therein, the exclusive right, privilege, and liberty of making, constructing, using, and selling to others to be used, the invention patented, subject to the adjudication of the Court. It will be valid for five, ten, or fifteen years at the option of the applicant; but the holder of a five or ten years' patent may obtain an extension for one or two separate periods of five years each; making a period of fifteen years in all, beyond which extensions are not granted.

Where an error occurs in the specification, through mistake or inadvertence, and without fraudulent intention, a patent may be surrendered and a new one issued. And if an inventor obtains, through inadvertence and mistake, without wilful intent to defraud, a patent for more than he is entitled to, he may disclaim. Such disclaimer must be in writing, and in duplicate, and attested by two witnesses, one copy to be filed and the other attached to the patent.

Patents may be assigned either in whole or in part. The assignment must be in writing, and must be registered in the Patent Office. An unregistered assignment will be void as against one subsequently registered. The Government have a right to use any patented invention or discovery, but they will pay the patentee therefor such sum as the Commissioner may report to be a reasonable compensation for the use thereof.

The remedy for the infringement of a patent is by an action at law, for damages, and an injunction may be obtained to restrain any future infringement. Such an

injunction may be obtained from the Court of Law in which any action for damages is pending ; or it may be obtained from a Court of Equity.

If any material allegation in the petition or declaration of the applicant be untrue, or if the specifications and drawings contain more or less than is necessary, and such omission or addition be wilfully made for the purpose of misleading, the patent will be void.

A patent will cease to be operative after two years, unless the patentee or his assignee or assignees has or have within that period, commenced, and since continuously carried on in Canada, the construction or manufacture of the invention.

The importing of the invention into Canada after twelve months after issue of the patent may also avoid it, unless permitted by the Commissioner, by whom the time may be extended.

Patents issued under any of the Acts of the several Provinces now forming the Dominion, prior to the 1st day of July, 1869, remain in force for the term for which they were originally granted, subject to the provisions of the new Act, so far as applicable.

The following fees are payable to the Commissioner, and must be paid in advance :

On petition for patent for five years .....	\$20 00
"    for a patent for ten years .....	40 00
"    for a patent for fifteen years .....	60 00
"    for extension from 5 to 10 years .....	20 00
"        "        10 to 15 years ....	20 00
"        "        5 to 15 years ....	40 00
On registering assignment .....	2 00
On attaching a disclaimer .....	2 00
On lodging a caveat .....	5 00
On asking copy of patent with specification .....	4 00

If an inventor or applicant is afraid that some person may get the advantage of him by applying for a patent before he (the inventor) has perfected his invention, he may file a description of such invention in the Patent Office (to be there left sealed) with or without plans; and such filing will operate as a *caveat*, and will entitle him to notice in case any one else should apply for a patent.

Every patentee must stamp or engrave on each patented article or on a label on a package of such articles sold or offered for sale, the year of the date of the patent, thus: "Patented, 1872," (*or as the case may be.*) The penalty for neglect to do this is fine and imprisonment.

By 47 Vict. cap. 38, a bill of exchange or promissory note, the consideration of which consists in whole or in part of the purchase money of a patent right, or of a partial interest in a patent right, must have written or printed across its face, before it is issued, the words "given for a patent right." Any transferee will then take the same subject to any defence or set-off which would have existed between the original parties.

The issuing, selling or transferring of such bill or note without such words, may be punished by imprisonment and fine.

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### FORMS.

#### *Petition for Patent.*

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, &c., (*state here name, residence and occupation in full.*)

SHEWETH :

That your petitioner has invented (*or discovered*) a new and useful



(*art, machine, manufacture, or composition of matter, or a new and useful improvement on such art, &c. : inserting here the title or name of his invention, or discovery, its object, and a short description of the same*) not known or used by others before this invention (*or discovery*) thereof, (*or not being at this time in public use, or on sale in any of the Provinces of the Dominion, with the consent or allowance of the inventor or discoverer thereof.*)

That your petitioner has elected his domicile at (*state here some known place in Canada*), and that he has resided for one year and upwards, prior to the time of this application for a patent at (*state where, and if in several places, state where, and the period of residence at each place.*)

Your petitioner therefore prays that a patent may issue in his favor granting him the exclusive property in the said invention (*or discovery*).

Dated the                      day of                      , 18 .

A. B.

#### Oath or Affirmation.

Province of                      , County of                      , to wit : I, A. B., of &c., (*insert name, residence and occupation*), make oath and say (*or if an affirmation, say, do solemnly and sincerely declare and affirm*) as follows :

1. That I verily believe that I am (*or that E. F., of &c., whose assignee (or representative) I am, is (or) was the true inventor (or discoverer) of the (here insert the name or title of the invention or discovery), for which I am soliciting a patent.*

2. That I have (*or the person whose assignee or representative he is, has been*) a resident of Canada for one year now last past.

Sworn (*or affirmed*) before  
me, at                      , in the County  
of                      , this                      day of                      ,  
A.D., 18                      .                      A. B.  
Y. Z.  
J. P. (*or as the case may be*).

#### Specification.

Whereas I, A. B., of, &c., have invented (*or discovered*) a new and useful (*art, machine, &c., state here the proper name or title of the invention or discovery ; or if an improvement only, so state it*) ; and the following is a full, clear and exact description of the same ; (*here*

*describe the invention or discovery in such exact and clear terms, as to distinguish it from all contrivances or processes for similar purposes : correctly and fully describe the mode of operating ; and the contrivance and things which are claimed as new. If the invention is a machine, explain fully the principle and several modes of appliance. Where the invention or discovery admits of illustration by drawings, refer to them here thus :) The plans and drawings accompanying this specification show clearly all parts of the invention (or discovery). Figure No. 1 shows etc., (stating clearly what each figure illustrates).*

Witness my hand at                      , this                      day of                      , 18                      .  
Signed in presence of                      A. B.  
C. D.  
E. F.

[NOTE.—*The specification and drawings must be in duplicate ; and the latter must bear the name of the inventor, and contain written references to the specification, and be certified by the applicant to be the drawings referred to in the specification.*]

#### *Surrender for Re-issue.*

TO THE HONORABLE THE COMMISSIONER OF PATENTS FOR INVENTIONS.

The petition of A. B., of, &c., sheweth :

That your petitioner did obtain letters-patent under the seal of the patent office, for a new (*thrashing machine*) which letters-patent are dated the                      day of                      , A. D., 18                      .

That your petitioner now believes that the same letters-patent are inoperative, or invalid, by reason of insufficient description or specification, (or by reason of his claiming more than he had a right to claim as new), which error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention.

Your petitioner therefore prays that he may be allowed to surrender the said letters-patent, and that new letters-patent may issue to him for the same invention for the residue of the period for which the original patent was issued, in accordance with the corrected description and specification herewith presented.

A. B.

(*A corrected specification and declaration must accompany this petition.*)

#### *Disclaimer.*

Know all men by these presents, That I, A. B., of, &c., to whom letters-patent under the seal of the Patent office, for a new (*thrash-*

*ing machine*.) did issue on the                      day of                      , A.D. 18                      , did by mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, make my specification too broad, claiming more than that of which I was the original or first inventor, [or, claiming to be the first inventor, or discoverer of a material and substantial part of the said *(thrashing machine)*, of which I was not the first inventor or discoverer, and which I have no legal or just right to claim] ; Now know ye, That I, the said A. B., do hereby disclaim that part of the specification and claim which is in the following words, to wit : *[Insert here that part which is disclaimed, in the words of the original. State also the extent of the interest which the disclaiming party has in the patent, whether an entire or partial interest.]*

Witness my hand, at                      , this                      day of                      , A.D. 18                      .  
Signed in the presence of                      A. B.

C. D.  
E. F.

#### *Assignment of an Entire Interest in a Patent.*

To all to whom these presents shall come, A. B., of, &c., sends greeting:

Whereas, the said A. B. has invented a certain (                      ), and has applied for and obtained letters-patent from the patent office in Canada, granting to him and to his assigns the exclusive right to make and vend the same: which letters-patent are dated on the day of                      , A.D. 18                      .

And whereas, C. D., of, &c., has agreed to purchase from the said A. B. all the right, title and interest which he, the said A. B., now hath in the said invention under the said letters-patent, for the price or sum of                      dollars.

Now these presents witness, that for and in consideration of the said sum of                      dollars, by the said C. D. paid to the said A. B. at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he, the said A. B., hath assigned and transferred, and by these presents doth assign and transfer, unto the said C. D., his executors, administrators and assigns, the full and exclusive right to the invention made by him, and secured to him by the said letters-patent, together with the said letters-patent, and all his interest therein or right thereto.

In witness whereof, the said A. B. hath hereunto set his hand and seal, this                      day of                      , A.D. 18                      .

Signed, sealed and delivered  
in the presence of

A. B. [L.s.]

X. Y.

*(An assignment of a partial interest may be readily framed from the foregoing. Every assignment must be registered in the patent office.)*

## POWER OF ATTORNEY.

A power of attorney, or letter of attorney, is a writing under seal, given to authorize another person, who is, in such case, termed the "attorney" of the person executing the power, to execute a deed, or sign a cheque, or receive rents, or perform any other lawful act in his stead. It is usually given to enable the attorney to do such acts as the person giving the power is unable, owing to absence, illness, etc., to perform. It is either general, or special: general when so drawn as to empower the attorney to do any act which the principal could delegate an attorney to do, and special when limited to some specific act or acts.

It is revocable at any time unless given for consideration and expressed to be irrevocable.

Any person of full age may execute a power of attorney. In drawing the power, care should be taken to describe fully and accurately the duties the attorney may fulfil, and the exact extent to which he may bind his principal. The attorney cannot bind his principal further than the power warrants, and cannot appoint a substitute, or delegate his powers, unless the instrument so provides. He should sign his principal's name to acts done under the power, adding his own name with the word "attorney."

A power of attorney should be executed before a witness in the usual manner of executing deeds. Where conveyances or mortgages of land are executed under it, it should be registered with the deed or conveyance, in the proper Registry Office.

The revocation of a power is effected by the execution of an instrument of revocation. The death of the principal also effects, *ipso facto*, a revocation. By statute, however, acts done by the attorney under the power before notification of the death to the parties concerned are generally protected.

#### BRITISH COLUMBIA.

By 38 Vict. cap. 18, it is enacted that every power of attorney continues in force until the death, bankruptcy, insolvency or (if a female) the marriage of the principal, or until the revocation of such power shall have been filed in the office of the Registrar-General of Titles; and lawful acts done by the attorney, after such death, bankruptcy, insolvency, marriage or revocation, and before the filing of such revocation, shall be effectual in favour of any person dealing with the attorney in good faith and without notice of such death, etc.

A confirmation in writing by the principal of any conveyance, mortgage or other specialty, or simple contract in writing, purporting to be signed or executed by such person, by his attorney, or of any act of his attorney, is conclusive evidence of the attorney's authority.

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#### FORMS.

##### *General Power of Attorney.*

I, A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_ and Province of \_\_\_\_\_, have made, constituted and appointed, and by these presents do make, constitute, and appoint C. D. of \_\_\_\_\_, my true

and lawful attorney for me, and in my name and stead and on my behalf to *(here state what acts the attorney is empowered to do)* giving and granting unto my said attorney full and ample power and authority to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes, as I might or could do if personally present, I hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this  
day of \_\_\_\_\_, A. D. one thousand eight hundred and \_\_\_\_\_.

Signed, sealed and delivered  
in the presence of

A.B. [L.S.]

E. F.  
G. H.

## GENERAL FORMS IN COMMON USE.

(FORMAL PARTS AS BEFORE.)

### *To sell and convey real estate :*

To grant, bargain and sell my farm, known and described as follows (describe fully) or such part or parcel thereof as he shall deem advisable, for such price and upon such terms as to payment or otherwise as he may deem proper, and for me, and in my name to make, execute and deliver such good and sufficient deeds and conveyances of the same as may be requisite, with the usual covenants.

### *To lease real estate :*

To lease and let to any person, as tenant, my house property being, etc., and to execute any proper instrument of lease for that purpose upon such terms as are usual, and as my attorney may deem advantageous to me, and to ask, demand, distrain for, receive, collect and recover all moneys or sums of money which may become due, or owing me as rent or otherwise in connection with the said lease, and to sign and deliver all proper receipts and acquittances therefor.

### *To transfer stock :*

To assign, transfer and set over unto \_\_\_\_\_ of \_\_\_\_\_ shares of stock now held by me, and in my name in the \_\_\_\_\_, upon which \_\_\_\_\_ per cent. is now paid.

*To accept drafts, etc..*

To accept all drafts drawn upon me in the usual course of my business, and to sign my name as acceptor thereof.

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*Revocation of Power of Attorney.*

Know all men by these presents that I, A. B. of , in the County of and Province of , for divers good causes and considerations me thereunto specially moving, do hereby by these presents revoke, retract, countermand, annul and make void a certain power of attorney, given by me under my hand and seal dated the day of , 18 , to C. D. of , and all powers and authorities therein expressed and delegated.

In witness whereof, etc.

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## PROTECTION OF GAME.

The following laws upon this subject will be found of interest to sportsmen, farmers, game inspectors and others.

## ONTARIO.

The law is governed by 49 Vict. cap. 45, extracts of which follow :

**2.** None of the animals or birds hereinafter mentioned shall be hunted, taken or killed, within the periods hereinafter limited ;

1. Deer, elk, moose, reindeer or caribou, between the fifteenth day of December and the fifteenth day of October ;

2. Grouse, pheasants, prairie fowl or partridge, between the first day of January and the first day of September ;

3. No quail shall be hunted, taken, or killed, during the years 1886, 1887, and no wild turkeys during the years 1886, 1887, 1888 ; and in each case thereafter not between the fifteenth day of December and the fifteenth day of October following.

4. Woodcock, between the first day of January and the fifteenth day of August ;

5. Snipe, rail and golden plover, between the first day of January and the first day of September ;

6. Swans or geese, between the first day of May and the first day of September ;

7. Ducks of all kinds, and all other water fowl, between the first day of January and the first day of September ;

8. Hares, between the fifteenth day of March and the first day of September.

**3.** No person shall have in his possession any of the said animals or birds, no matter where procured, or any part or portion of any such animals or birds, during the periods in which they are so protected ; provided that they may be exposed for sale for fifteen days, and no longer, after such periods, and may be had in possession for the private use of the owner and his family at any time, but in all cases the proof of the time of killing, taking or purchasing, shall be on the person so in possession.

**4.** No eggs of any of the birds above mentioned shall be taken, destroyed, or had in possession by any person at any time.



5. None of the said animals or birds, except the animals mentioned in section 7 of this Act, shall be trapped, or taken by means of traps, nets, snares, gins, baited lines, or other similar contrivances; nor shall such traps, nets, snares, gins, baited lines, or contrivances, be set for them, or any of them, at any time; and such traps, nets, snares, gins, baited lines, or contrivances, may be destroyed by any person without such person thereby incurring any liability therefor.

6. None of the contrivances for taking or killing the wild fowl known as swans, geese or ducks, which are described or known as batteries, swivel guns, sunken punts, shall be used at any time; and no wild fowl, known as ducks, or other water fowl, except geese or swans shall be hunted, taken or killed, between the expiration of the hour next after sunset and the commencement of the hour next before sunrise.

7. No beaver, mink, muskrat, sable, martin, otter, or fisher, shall be hunted, taken or killed, or had in possession of any person between the first day of May and the first day of November; nor shall any traps, snares, gins, or other contrivances, be set for them during such period; nor shall any muskrat house be cut, speared, broken or destroyed, at any time; and any such traps, snares, gins, or other contrivances so set, may be destroyed by any person without such person thereby incurring any liability therefor: provided that this section shall not apply to any person destroying any of the said animals in defence or preservation of his property.

8. Offences against this Act shall be punished upon summary conviction on information or complaint before a justice of the peace, as follows:

- (a) In case of deer, elk, moose, reindeer or caribou, by a fine not exceeding \$50, nor less than \$10, with costs, for each offence;
- (b) In case of birds or eggs, by a fine not exceeding \$25 nor less than \$5, with costs, for each bird or egg;
- (c) In case of fur-bearing animals, mentioned in section 7 of this Act, by a fine not exceeding \$25, nor less than \$5, with costs, for each offence;
- (d) In the case of other breaches of this Act, by a fine not exceeding \$25, nor less than \$5, with costs.

9. The whole of such fine shall be paid to the prosecutor unless the convicting justice has reason to believe that the prosecution is in collusion with, and for the purpose of benefitting the accused, in which case the said justice may order the disposal of the fine as in ordinary cases.

10. In all cases confiscation of game shall follow conviction, and the game so confiscated shall be given to some charitable institution or purpose, at the discretion of the convicting justice,

11. In order to encourage persons who have heretofore imported or hereafter import different kinds of game, with the desire to breed and preserve the same on their own lands, it is enacted that it shall not be lawful to hunt, shoot, kill or destroy any such game without the consent of the owner of the property wherever the same may be bred.

12. It shall not be lawful for any person to kill or take any animal protected by this Act, by the use of poison or poisonous substances, nor to expose poison, poisoned bait or other poisoned substances, in any place or locality, where dogs or cattle may have access to the same.

13.—(1) No person shall at any time hunt, take or kill, any deer, elk, moose, reindeer, or caribou, for the purpose of exporting the same out of Ontario, and in all cases the onus of proving that any such deer, elk, moose, reindeer or caribou, as aforesaid, so hunted, taken or killed, is not intended to be exported as aforesaid, shall be upon the person hunting, killing, or taking the same, or in whose possession or custody the same may be found.

(2) Offences against this section shall be punished by a fine not exceeding \$25, nor less than \$5 for each animal.

14. No owner of any hound, or other dog known by the owner to be accustomed to pursue deer, shall permit any such hound, or other dog, to run at large in any locality where deer are usually found, during the period from the fifteenth day of November, to the fifteenth day of October, under a penalty on conviction, of not more than \$25, nor less than \$5, for each offence; any person harbouring or claiming to be the owner of any such hound or dog shall be deemed the owner thereof.

15. It shall be lawful for the council of any county, city, town, township, or incorporated village, to appoint an officer who shall be known as the game Inspector for such county, city, town, township or incorporated village, and who shall perform such duties in enforcing the provisions of this Act, and be paid such salary, as may be mutually agreed upon.

16. (1) It shall be the duty of every such game Inspector appointed as aforesaid, forthwith to seize all animals or portions of animals in the possession of any person contrary to the provisions of this Act, and to bring the person in possession of the same before a justice of the peace, to answer for such illegal possession.

(2) It shall also be the duty of every such game Inspector, to institute prosecutions against all persons found infringing the provisions of this Act, or any of them, and every such Inspector may cause to be opened, or may himself open in case of refusal, any bag,

parcel, chest, box, trunk, or receptacle in which he has reason to believe that game killed or taken during the close season, or peltries out of season, are hidden.

(3) Every such Inspector, if he has reason to suspect, and does suspect that game killed or taken during the close season, or peltries out of season, are contained or kept in any private house, shed, or other building, shall make a deposition in the Form A annexed to this Act, and demand a search warrant to search such store, private house, shed, or other building, and thereupon such justice of the peace may issue a search warrant according to Form B.

**17.** This Act shall come into effect on and after the first day of July next after the passing thereof.

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#### FORM A.

I, \_\_\_\_\_ undersigned game Inspector for  
do hereby declare that I have reason to suspect,  
and do suspect, that game killed or taken during the close season,  
or furs out of season, etc., etc., (*as the case may be*) are at present  
held and concealed (*describe the property, occupant, etc., and the  
place*).

Wherefore I pray that a warrant may be granted and given to me  
to effect the necessary searches (*describe here the property, etc., as  
above*).

Sworn before me at  
this \_\_\_\_\_

day of  
A.D. 18  
L. B.  
J. P. }

X. Y.  
Game Inspector.

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#### FORM B.

Province of Ontario, )  
County of )

To each and every the constables of  
County of \_\_\_\_\_

Whereas,

Game Inspector for  
has this day declared under oath before me,  
the undersigned, that he has reason to suspect that (game, or birds  
killed or taken during the close season, or furs out of season, etc.,  
*as the case may be*) are at present held and concealed (*describe prop-  
erty, occupant, place, etc.*)

Therefore, you are commanded by these presents in the name of Her Majesty, to assist the said Game Inspector, and to diligently help him to make the necessary searches to find the *(state the birds or game killed or taken during the close season, or furs out of season, etc.,)* which he has reason to suspect and does suspect to be held and concealed in *(describe the property, etc., as above)* and to deliver, if need there be, the said birds, etc., *(as the case may be)* to the said Game Inspector, to be by him brought before me or before any other magistrate to be dealt with according to law.

Given under my hand and seal  
at                      County of  
this                      day of  
                         A.D. 18  
L. S.

L. B.  
J. P.

## NOVA SCOTIA.

The close season is as follows :

Caribou and Moose,	from 1st February to 15th September.
Beaver,	" 1st April " 1st November.
Hares and Rabbits,	" 1st March " 1st October.
Otter and Mink,	" 1st May " 1st November.
Grouse and Partridges,	1st January " 1st September.
Woodcock, Snipe and Teal,	1st March " 1st August.
Blue Winged Duck,	" 1st April " 1st August.

No person is permitted to kill, during one season, more than two moose and four caribou ; nor can these animals be hunted with dogs, nor can any snare or trap be set for them. Fur bearing animals other than those above mentioned cannot be hunted between the first of April and the first of November, unless they be bear, wolf, loup-cervier, wild cat, skunk, raccoon, wood-chuck or musquash. Pheasants are not permitted to be killed at any time.

## NEW BRUNSWICK.

The close season is as follows :

Moose, Caribou and Deer,	from 1st February to 1st August.
Mink, Otter, Fisher, Sable and Beaver,	1st May " 1st September.
Partridge,	from 1st March " 20th September.
Woodcock and Snipe,	" 1st December " 1st September.
Black Duck, Wood Duck and Teal,	15th May " 4th September.

## PRINCE EDWARD ISLAND.

The close season is as follows :

Otter, Martin and Muskrat,	from 1st May	to 1st November.
Hares and Rabbits,	" 1st March	" 1st September.
Partridges,	" 15th February	" 15th October.
Woodcock and Snipe,	" 1st January	" 20th August.
Wild Duck,	" 1st March	" 10th August.
Bittern,	" 15th April	" 20th August.
Salmon,	" 1st September	" 31st December.

## BRITISH COLUMBIA.

The close season is as follows :

Deer,	}	shall not be shot or taken between the 10th January and the 1st September.
Elk,		
Reindeer,		
Caribou,		
Hare,	}	shall not be shot or taken between the 20th Feb- ruary and the 1st September.
Grouse,		
Prairie Fowl,		
Partridge,		
Quail,	}	
Meadow Lark,		
Thrush,		
Robin,		

Mallard Duck shall not be shot or taken between the 1st March and the 1st September; nor Pheasants from the 1st February to 1st September in each year. Traps or snares are unlawful. Deer cannot be killed for their hides alone.

## MANITOBA.

The following extracts give the amended law upon the subject.

**31.** None of the animals or birds hereinafter mentioned in this section shall be shot at, hunted, trapped, taken or killed within the periods hereinafter limited (a) deer, elk, moose, reindeer or caribou, or their fawn, and rabbits and hares, between the first day of January and the first day of October; (b) grouse, partridges, prairie chicken and pheasants, between the first day of January and the first day of September; (c) woodcock, plover and snipe, between the fifteenth day of March and the first day of August; (d) any kind of wild duck, sea-duck, widgeon, teal, wild swan or wild geese, except the variety of wild geese commonly known as "waveys," between the first day of May and the first day of September; (e) otter, fisher, beaver, muskrat and sable between the first day of May and the first day of October; (f) mink, marten and pekan between the fifteenth day of April and the first day of November. None of the said animals or birds, except the animals in sub-sections e and f of this section, shall be trapped or taken by means of traps, nets, snares, gins, baited lines or other similar contrivances; nor shall such traps, nets, snares, gins, baited lines or contrivances be set for any of them, at any time, and such traps, nets, snares, gins, baited lines or contrivances may be destroyed by any person without such person thereby incurring any liability therefor. None of the contrivances for taking or killing the wild fowl known as swans, geese or ducks, which are described or known as batteries, swivel-guns, sunken-punts or night-lights shall be in the possession of any person, nor shall they be used at any time, nor shall any muskrat-house be cut, broken or destroyed at any time, nor shall any spring-gun be used to kill or destroy any animal mentioned in this section. No person shall kill or take any animal or bird protected by this section, by the use of poison or poisonous substances, nor shall any person expose poisoned bait or other poisoned substances in any place or locality whatever. No person shall have in his possession any animal or bird mentioned in this section, or any part of such animal or bird, with the exception of the skin, during the period in which the same is protected by this section. No eggs of any of the birds mentioned in this section shall be taken, destroyed or had in possession by any person at any time, nor shall the nests of any of such birds be at any time wilfully disturbed. Any eggs of such birds found in any person's possession shall be confiscated, and any vessel or boats employed in disturbing, gathering or taking such eggs shall be confiscated and destroyed or sold. This section shall not apply to Indians within the limits of their reserve with regard to any animals or birds killed at any period of the year for their own use

only, and not for purposes of sale or traffic. No person or corporation shall at any time or in any manner export or cause to be exported or carried out of the limits of the Province any of the animals or birds mentioned in this section, and this provision shall apply to railway and express companies.

**65.** No person shall shoot, destroy, kill, wound or injure, or attempt to shoot, destroy, kill, wound or injure, or take, capture, buy, sell, expose for sale, or have in possession at any time, any bird, except eagles, falcons, hawks, owls, wild pigeons, black-birds, king-fishers, jays, crows, ravens or any imported cage-birds or other domesticated birds generally known as cage-birds, any birds commonly known as poultry, or the birds especially mentioned in section sixty-one herein. No person shall set, wholly or in part, any net, trap, springe, snare, cage or other machine or engine, by which any bird except eagles, falcons, hawks, owls, wild pigeons, black birds, king-fishers, jays, crows, ravens or any imported cage-birds or other domesticated birds generally known as cage-birds, or any birds commonly known as poultry, might be killed or captured; and any net, trap, springe, snare, cage or other machine or engine, set, either wholly or in part, for the purpose of either capturing or killing any bird except those previously mentioned in this sentence, may be destroyed by any person, without such person incurring any liability therefor. No person shall take, injure, destroy, or have in possession any nest, young or egg of any bird except eagles, falcons, hawks, owls, wild pigeons, black-birds, king-fishers, crows, ravens, any imported cage-birds or other domesticated birds generally known as cage-birds, or any birds commonly known as poultry. Any market clerk, policeman, constable or game guardian may seize, on view, any bird unlawfully possessed, and carry the same before any magistrate, to be by him confiscated, and if alive to be liberated, and it shall be the duty of all market clerks, policemen, constables and game guardian, to seize such birds.

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## RECEIPTS AND RELEASES.

A RECEIPT is an acknowledgment in writing that the party by or for whom it is signed has received from the party named therein money or goods as specified. It is, as a rule, only *prima facie* evidence that such money or goods were received, and if shown to be obtained by fraud or misrepresentation, or given under mistake of the facts, it may, as between the parties to it, be annulled or treated as invalid by a Court of Equity. Payment of money or delivery of goods may of course be proved by verbal evidence as well as by receipt, even where the latter was given, but has been lost or mislaid.

A RELEASE is a written discharge of any right, title, or demand which one man may claim against another. No special form of words is essential if the intention be plain, though the words commonly used, where money-claims or goods are referred to, are "remise, release, acquit and discharge." With reference to lands, or interests in lands, the release is commonly called a *quit-claim*, and is a conveyance of whatever interest the releasor may have in the property, the words used being, "remise, release and forever quit-claim." A quit-claim of interest in lands is only effectual where the releasee, or person in whose favour it is given, already holds the possession of the lands, or some interest therein. It should be executed with the same formalities as a deed.

All releases are properly made under seal. A release of all demands is a bar to all actions, claims, demands, and causes of action which the party executing the same may have against the releasee up to the date of its exe-



cution. A release of one of two joint debtors is a legal release of both. One of several executors may legally release a debt due the estate without the signature of the others.

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FORMS.

*Receipt for cash payment on Account.*

Kingston, Ont., January 7th, 1886. Received from A. B. five hundred dollars to be applied on account.  
\$500.00. C. D.

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*Receipt in full of Account.*

Halifax, N.S., May 20th, 1886. Received from Messrs. E. F. & Co., seventy dollars and sixty-three cents, in full balance of account rendered to 1st instant.  
\$70.63. G. H.

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*Receipt for Promissory Note delivered.*

Victoria, B.C., March 1st, 1885. Received from Messrs. E. F. & Co., their note in favour of ourselves or order dated this day, payable four months after date at the Merchants' Bank here, for one thousand dollars, which, when paid, will be in full of all demands.  
\$1,000.00. G. H. & Co.

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*Receipt for Deeds left.*

Moncton, N.B., May 3rd, 1885. I have this day received from J. K., the following title deeds of his farm lately purchased by me, to wit: (*here describe deeds, etc., giving names of parties, dates and nature of instrument*), for which I agree to be accountable, and to return the same on demand. L. M.

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*Mutual Release on settling Partnership Accounts.*

Whereas a partnership has heretofore subsisted between us, A. B. and C. D., and has been this day dissolved by mutual consent, and the accounts of all transactions and dealings thereof up to such dissolution have been to our mutual satisfaction adjusted and balanced whereby nothing remains due from the one of us to the other. And whereas to ratify and confirm such settlement and adjustment, and to prevent and obviate any further disputes or disagreements touching and concerning all or any of such accounts or partnership transactions we have mutually agreed to release each other, and these presents are executed with such intention.

Now know all men that I, the said A. B., for the consideration hereinbefore expressed have remised, released and forever discharged, and by these presents, etc., (*following general form, each partner executing a separate general release to his co-partner, with necessary change of names in operative part.*)

*General Release of all Demands.*

Know all men by these presents, that I, A. B., of as well for and in consideration of the sum of one dollar to me in hand paid by C. D., of the same place, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, as for divers other good causes and valuable considerations me thereto specially moving, have remised, released, quit-claimed, and forever discharged, and by these presents, for me, my heirs, executors, and administrators, do remise, release, quit-claim, and forever discharge, the said C. D., his heirs, executors, and administrators, each and every of them, of and from all and all manner of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims, and demands whatsoever, in law, equity, or otherwise howsoever which against the said C. D. I ever had, now have, or which I, my heirs, executors, and administrators hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof I have hereunto set my hand and seal this tenth day of May, A.D. 1886.

Witness :

A. B. [L. s.]

## STRIKES AND BOYCOTTING.

*A strike* may be defined as a simultaneous and concerted refusal, on the part of workmen, to continue work, or an agreement to simultaneously quit the employment of their common master or employer. This may be regarded in law in two aspects;—either as the common act of a body of persons banded together, or with reference to the individual acts of the employees. In the latter view, the act of quitting employment may or may not amount to a breach of contract according to the terms of the agreement under which the workman is employed, and to determine this question reference must be had to the principles enunciated in the chapter on MASTER AND SERVANT, where the legal rights and remedies of the parties respectively are pointed out.

Regarded, further, as a joint act, for the responsibility of which each individual is answerable, the following considerations may be applicable.

Any workman is at liberty to peaceably quit the employment of him who hires him, at any time; and the fact that others of his fellow employees also choose the same time to quit work, cannot be held to restrict his liberty in this regard. So long as he commits no breach of his own agreement of hiring, he has done no wrong. The matter is personal with himself. Should, however, he interfere with, threaten or molest other workmen in the service of his former employer, for the purpose of forcing them also to desert their employment, or should he even unfairly entice them

away from, or procure them to desert, such employment, he is guilty of an improper act, and may be sued by their employer in damages.

There is, further, a criminal liability on the part of workmen guilty of such improper acts, as is more fully set forth in the statutes of Canada, extracts from which are appended.

The statutes of Canada, 39 Vict. cap. 37, provide as follows:—

1. Every person who wrongfully and without legal authority, with a view to compel any other person to abstain from doing anything which he has a legal right to do, or to do anything from which he has a legal right to abstain—

(i). Uses violence to such other person, or his wife or children, or injures his property; or—

(ii). Intimidates such other person, or his wife or children, by threats of using violence to him, her or any of them, or injuring his property; or—

(iii). Persistently follows such other person about from place to place; or—

(iv). Hides any tools, clothes or other property owned or used by such other person, or deprives him, or hinders him in the use thereof; or—

(v). Follows such other person with one or more other persons in a disorderly manner in or through any street or road; or—

(vi). Besets or watches the house or other place where such other person resides or works or carries on business or happens to be—  
shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a term not exceeding three months;

Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

4. A prosecution shall not be maintainable against a person for conspiracy to do any act, or to cause any act to be done for the purposes of a trade combination, unless such act is an offence indictable by statute or is punishable under the provisions of the Act hereby amended; nor shall any person, who is convicted upon any such prosecution, be liable to any greater punishment than is provided by such statute or by the said Act as hereby amended, for the act of which he may have been convicted as aforesaid.

Malicious injury to wires, batteries, etc., and malicious obstruction of the working of the telegraph in Canada, is made a misde-

meanor punishable by imprisonment in any gaol for any term less than two years, without or without hard labour.

Any person guilty of a wilful omission or neglect of duty which endangers the safety of any railway passenger, or guilty of assisting therein, is liable to like punishment.

*Boycotting* may be defined as a method of injuring or persecuting a citizen, with the object of ruining his business, or compelling him to remove from the district wherein he resides. It is generally sought to be accomplished by the conjoint agreement of a large number to hold no intercourse, and have no dealings of any kind, with him or with any who assist him or who decline to join in the boycott.

Where this treatment is the result of a common and concerted agreement on the part of several individuals, it may constitute the crime of conspiracy, for which those guilty are liable to be indicted before the Grand Jury. It is in such cases a crime of grave magnitude, and if accompanied by acts of violence, merits the severest punishment. Happily it is little known in Canada, and no extended reference to it is necessary.

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## THE TORRENS SYSTEM OF LAND TRANSFER.

This system is now in force in Manitoba, the North-West Territories, and in part of Ontario. It is expected that it will be in operation throughout the whole of Ontario before another year has passed.

The Torrens system was introduced into Manitoba in the year 1885, and into Ontario during the same year. The bill for its introduction into the North-West Territories was passed by the Parliament of Canada in the year 1886. The following statements, explanatory of the system, have been compiled from various sources, to enable readers to familiarize themselves with its objects and methods.

The Torrens system offers to the owners of land, alienated from the Crown prior to the coming into operation of the Act, the opportunity of causing their lands to become subject to a law which will free them forever from the old system of conveyancing by deed, while imposing upon them a certain new procedure.

Land once brought under the system cannot be withdrawn from its operation, but all dealings with it must, thenceforth, be conducted as the Act directs.

Alienated land not brought under the operation of the Act remains subject to the general law regarding real property, conveyances, mortgages, etc., affecting them, continue to be drawn up in the old forms, and to be registered in the General Registry Office.

The old and new systems of Transfer and Registration continue, therefore, to exist side by side.

In Manitoba and the North-West Territories, land granted by the Crown subsequent to the introduction of the Torrens Act is under the Act *ipso facto*. The Crown Grant is registered under the Act without the grantee taking any steps in the matter. The old system of conveyancing, therefore, cannot there be applied to land bought from the Crown after the introduction of the Torrens system, but all dealings with such land must be conducted on the system of *registration of title*.

Any other land may be brought under the Act on the application of the persons interested. The application, with the deeds, is left at the Lands Titles' Office, and the title is there investigated by the officers appointed for that purpose. If it be found that the title, although perhaps not technically perfect, is yet secure against ejectment and against the claims of any other person, the land will be brought under the Act, and the proprietor, or his nominee, will receive a certificate of title. In Ontario, provision is made for the issue of three kinds of certificates; (1) an absolute certificate; (2) a qualified certificate; (3) a possessory certificate. The latter should more properly be called a certificate of recorded possession. It is merely a certificate that the person claiming is in possession as owner subject to any defects there may be in his title prior to legislation. It is, of course, possible that the certificate of title may, through error, issue to the wrong person, and that injustice may be done. In such case the person injured has a remedy in damages against the Government, and, in order to form a fund to meet claims of this nature, a fee is charged of one quarter of one per cent. on the value of all land brought under the Act. On the issue of the certificate, the old deeds, if they relate exclusively to

the land applied for, are cancelled and retained in the office. If they relate to other property, they are returned, each deed being marked as cancelled, so far as relates to the land brought under the Act. In any case, they are of no use to the land brought under the Act, since from thenceforth the certificate of title is conclusive evidence that the person named in it is entitled to the land it describes. The certificate of title operates as a Government guarantee that the title is perfect. It is indefeasible, and there is no going behind it.

A certificate of title is issued to every person entitled to any estate of freehold in possession in land under the Act.

Every certificate is in duplicate. One duplicate is given to the proprietor, the other is retained in the Lands Titles' Office. The certificate in the office constitutes the register book, which, in the words of Mr. Torrens, is the pivot on which the whole mechanism turns. Every certificate is marked with the number of the volume and the folium of the register book. Crown Grants of land bought since the Acts came into operation are also issued in duplicate, one of which is bound up in the register book, and such grants are, in all respects, equivalent to certificates of title.

So far, it will be said, the title is simplified, but how is this simplicity to be retained—how will future complications be prevented? This is the problem which the Act endeavours to solve.

For the purpose of facilitating transactions, forms of transfer, mortgage, lease, and other dealings are furnished in the Act, the forms ordinarily in use in Ontario being set out below. Any person of ordinary education can, with very little trouble, learn to fill them up in the



more simple cases, without professional assistance. If a proprietor holding a certificate of title wishes to sell the whole of the land included in it, he fills up and executes a printed form of *memorandum of transfer*, which may be endorsed by the purchaser. The transfer is presented at the office, and a memorial of the transfer is recorded by the proper officer on both duplicates of the certificate of title. The purchaser, by the recording of the memorial, stands in precisely the same position as the original owner. If only a part of the land in a certificate is to be transferred, such part is described in the memorandum of transfer, the transfer is noted on both duplicates of the original certificate, a fresh certificate is issued to the purchaser for the part transferred, and the original certificate is noted as cancelled with respect to such part. The process is repeated on every sale of the freehold, and it will thus be seen that every person entitled to a freehold under the Act has but one document to show his title, through however many hands the property may have passed, and such document vests in him an absolutely indefeasible title to the land it describes.

If the proprietor wishes to mortgage or lease his land, or to charge it with the payment of a sum of money, he executes in duplicate a memorandum of mortgage, lease or encumbrance, in the form provided in the Act, altered so as to meet the particular circumstances of the case. This is presented at the Lands Titles' Office with the certificate of title: a memorial of the transaction is entered by the proper officer on the certificate of title, and on the duplicate certificate forming the register book. The entry of this memorial constitutes registration of the instrument, and a note,

under the hand and seal of the proper officer, of the fact of such registration is made on both duplicates of the instrument. Such note is conclusive evidence that the instrument has been duly registered; one of the duplicates is then filed in the office, and the other is handed to the mortgagee or lessee. The certificate of title will thus show that the original proprietor is entitled to the land it describes, subject to the mortgage, lease, or encumbrance; while the duplicate instrument held by the mortgagee, lessee, or encumbrancee, will show precisely the nature of his interest. Each person has, and can have, but one document of title, and this shows conclusively the nature of the interest he holds and to that interest his title is indefeasible. If a mortgage is paid off, under the Torrens Act proper, as passed in Manitoba, a simple receipt is endorsed on the duplicate mortgage held by the mortgagee. This is brought to the office, and the fact that the mortgage has been paid off is noted on the certificate of title. A mortgage under the Act does not involve a transfer of the "legal estate," although the mortgagee is made as secure as if such transfer had taken place. The necessity, therefore, for a deed of reconveyance, when the mortgage is paid off, at once vanishes. If a lease is to be surrendered, it has merely to be brought to the office with the word 'surrendered' indorsed upon it, signed by the lessor and lessee, and attested and the proper officer will note the fact that it has been surrendered, on the certificate of title. Mortgages or leases are transferred by indorsement, by a simple form. The Act provides implied powers of sale and foreclosure in mortgages; and in leases, implied covenants to pay rent and taxes, and to keep in repair, together with power for the lessor to enter and view the state of repair, and to

re-enter in case of non-payment of rent or breach of covenant. All these may be omitted, or modified if desired. In order to save verbiage, short forms are provided, which may be used for covenants in leases, or mortgages, the longer forms which they imply being set out in the Act.

Every person, therefore, entitled to a freehold estate in possession, has (if his land is subject to the Act) a certificate of title, or land-grant, on which are recorded memorials of all mortgages, leases or encumbrances, and of their discharge or surrender. If he transfers his entire interest, a memorial of the transfer is recorded on the certificate, and the transferee takes it subject to recorded interests. The transferee can, if he chooses, have a fresh certificate issued in his own name, and in that case the old certificate is cancelled, and the memorials of the leases or mortgages to which the land is subject are carried forward to the new one. If a proprietor transfers only a part of his land, his certificate is cancelled so far, a fresh certificate is issued, and memorials of outstanding interests are similarly carried forward. Memorials of dealings with leases or mortgages are noted on the duplicate lease or mortgage held by the lessee or mortgagee, and on the folium of the register book. The officers of the department, therefore, and persons searching, can see at a glance the whole of the recorded dealings with every property; while each person interested can see, by the one document he holds, the precise extent of his interest.

It cannot be too emphatically pointed out that it is not the execution of the memorandum of transfer, lease or mortgage, but its registration in the *Lands Titles' Office*, that operates to shift the title. No instrument,

until registered in the manner prescribed by the Act, is effectual to pass any estate or interest in any land under the operation of the Act, or to render such land liable to any mortgage or charge; but *upon such registration*, the estate or interest comprised in the instrument passes, or the legal effect of the transaction, whatever it may be, is complete. Registration takes effect from the time of production of the instrument, not from the time of the actual making of the entry.

The publicity attending an ordinary mortgage is sometimes avoided under the old system by an equitable mortgage. Registration of title does not do away with this mode of charging land, but an equitable mortgage or lien upon land may be created by deposit of the grant or certificate of title. The following description of the practice as regards equitable mortgage is extracted from a pamphlet recently published by Sir R. R. Torrens:—"The borrower executes a *contract for charge* in the authorized form, either for a specified sum, or, as is more usual, for such sum as may appear due upon balance of account at any future date. This instrument, with the certificate of title, is held by the creditor, who does not register, but lodges a Caveat forbidding the registration of any dealing with the land until fourteen days, or other named period, have elapsed after notice of intention to register the same has been served by the Registrar at an address given. A red ink cross, with the number of the Caveat, is then inscribed on the proper folium of the register. The creditor, upon receipt of such notice, or at any time, may turn his equitable mortgage into a registered charge, by presenting the contract for charge with the deposited certificate of title at the Registry Office.

A very important principle in the Torrens system of registration of title, and one which should be most jealously guarded, if that system is to retain the simplicity which is the main-spring of its success, is the non-recognition of trusts. No notice of trusts may be entered on the register, nor may any instrument declaring trusts be registered. The usual simple transfer must be registered, and the transferees, notwithstanding their fiduciary position, appear there as the registered proprietors for all intents and purposes. An instrument declaring the trusts may, however, be deposited in the Registry office for safe custody, and the rights of the persons beneficially interested are protected by the execution by the transferees of such an instrument, which is lodged in the Registry for safe custody and reference. A protection against fraud is provided by enacting that whenever the words "No Survivorship" are written on the instrument of title held by trustees, the land in respect of which they are registered cannot be dealt with by a less number of trustees than those registered, without the sanction of the Supreme Court. A Caveat prohibiting the registration of any dealing, except in accordance with the trusts so declared, may be lodged by any person interested in the trust property. These safeguards do not interfere with the principle sought to be maintained, namely, that the trustee, being the registered proprietor, can give an absolutely indefeasible title to a person with whom he deals, and that beneficiaries, though the Caveats provide a check upon frauds and breaches of trust, must rely mainly on the integrity of their trustees.

REGISTRATION OF DEALINGS WITH LAND, UNDER THE  
REAL PROPERTY ACT.

It is an essential part of the Torrens System that every instrument purporting to deal with any interest or estate in land subject to it must be registered in order to give legality to the transaction. It is the registration, not the signatures of the parties, which gives such a transaction its binding force, and no change in the title is effected by an unregistered instrument.

The principal transactions and instruments which have to be notified to the Lands Titles' Office, and registered there in order to give a valid title to any person claiming under them, are:—

Transfer in fee.

Lease.

Mortgage.

Encumbrance or charge.

Endorsement of Transfer of Lease.

Ditto of Mortgage.

Ditto of Encumbrance.

Ditto of Surrender of Lease.

Ditto of Discharge of Mortgage.

Power of Attorney.

Transmission by Marriage.

Ditto by Insolvency.

Ditto by Will, or Intestacy.

*Fi. fa.*, or Order or Decree of Supreme Court.

TRANSFERS, LEASES, AND MORTGAGES.

Of a transfer in fee, only one copy need be presented for registration; a mortgage must be in duplicate, and a lease in triplicate.

The instruments presented for registration are received by the proper Official, who examines them to see that they fulfil all the requirements of the Act, namely, that they are free from erasures, properly witnessed and proved; also that they are accompanied by diagrams, if necessary, and by the certificate of title.

The Master of Titles or other official has to satisfy himself that the transaction is one to the registration of which no objection exists, and for this purpose he has to compare the original and duplicate and to see that the instrument is sufficiently clear and explicit, and that the parties are legally in a position to deal as proposed in it.

After registration, the memorandum of transfer is of no further use to the transferee, for he obtains, instead of it, either a new certificate declaratory of his title, or else, if he prefers it (where the whole of a holding is transferred), the original certificate, with a memorial recording the transfer.

If the fee of part only of the land included under an existing grant or certificate of title be transferred, the transferee gets a certificate for the portion acquired by him, while the proprietor has the choice either of leaving in the office his old certificate, cancelled as to the portion transferred, with the view of ultimately disposing of the remainder, or of taking out a new certificate for the balance of the land retained by him, his old certificate being altogether cancelled.

A proprietor who intends to sub-divide his land with the view of disposing of it in lots is required to deposit in the Lands Titles' Office a plan, in duplicate, certified by a declaration of a licensed surveyor, in which all allotments, streets, &c., must be distinctly delineated, the allotments being marked with numbers or symbols.

ASSIGNMENT, ETC., OF MORTGAGES, ENCUMBRANCES, OR  
LEASES.

Mortgages, encumbrances, and leases, may be transferred by a simple endorsement written upon the copy of the instrument retained by the proprietor of the interest dealt with, and duly registered.

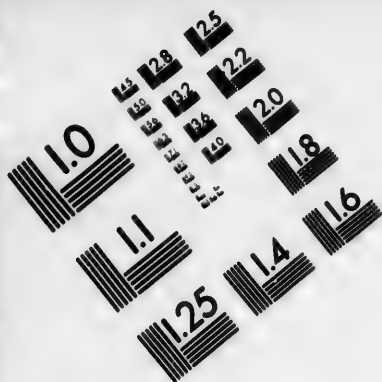
The surrender of a lease is effected by endorsing the simple word "Surrendered," signed by the lessee, and "Accepted" by the lessor, this being attested in the prescribed manner and duly registered.

A mortgage or encumbrance may be discharged (in Manitoba) by the simple endorsement on the instrument of a receipt for the money secured, signed by the party entitled, attested by a witness, and duly registered. In Ontario, the same form of discharge of mortgage is used as under the Ontario Registry Act.

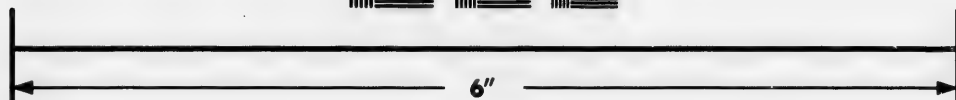
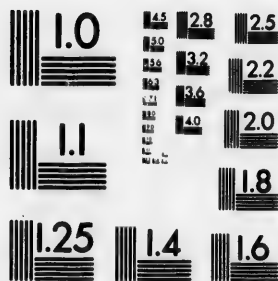
TRANSMISSION.

Upon the death of the proprietor of any land which is subject to the Real Property Act, his executor or administrator makes an application in writing to the Registrar-General, or Master of Titles, to be registered as proprietor, producing in substantiation of his claim the duplicate grant or certificate of title, and the probate, or letters of administration. This is received, entered and examined in the manner above described relating to transfers, and a memorial is entered on the duplicate grant or certificate of title and in the register-book, recording the date of the will and probate, or of the letters of administration, the date and hour of their production, the date of the death of the proprietor, etc. This having been done, the executor or administrator





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becomes the registered proprietor, holding in trust for the persons beneficially entitled, and his title has relation back to the time of the death of the deceased proprietor, etc.

If the registered proprietor of an estate or interest in land becomes insolvent, or makes any statutory assignment for the benefit of his creditors, his assignees or trustees are entitled to be registered as proprietors in respect of the same. An application in writing is made by them to the Registrar-General to have the particulars of their appointment entered in the register-book, and evidence of such appointment is furnished to him. A memorandum notifying the same having been entered in the register-book, the trustees become the proprietors of the estate or interest of the insolvent, or assignor, in the land.

#### LOSS, OR DESTRUCTION, OF CERTIFICATE OR GRANT.

The proprietor of land whose grant or certificate of title has been lost, mislaid, or destroyed, may obtain a "provisional certificate" from the Lands Titles' Office which is an exact copy of the duplicate bound up in the register-book with all the memorials (if any) recorded thereon. He has to make a statutory declaration setting out the facts and all particulars affecting the title, and the intended issue of the provisional certificate must be notified by advertisement.

Any one who chooses to apply for it may obtain, upon payment of a small fee, a certified copy of any registered instrument affecting land under the provisions of the Act, and this is available as evidence in all Courts of Justice.

## NEW CERTIFICATES.

A registered proprietor who desires to have a certificate of title free from memorials disclosing past liabilities or transactions, which no longer affect the land, may surrender his existing certificate, and obtain a clean one on payment of a moderate fee.

Similarly, a registered proprietor may surrender two or more grants or certificates for contiguous lands, and take out one certificate for the whole; or, if he so desires, he may surrender a single grant or certificate, and take out as many new certificates as he chooses there shall be sub-divisions of his land, paying the prescribed fees in either case.

Such is the system which, in the Australian Colonies, has, in a great measure, superseded the cumbrous, tedious, uncertain, and costly system of conveyancing, and which Sir R. R. Torrens states "has been tested by an experience of over twenty years, during which upwards of 539,000 transactions of various kinds have been completed at a reduction in cost from pounds to shillings, and in time from months to days."

The following are the Forms in ordinary use in the Province of Ontario:

1.—*Form of Register on first entry of Ownership.*

LAND TITLES ACT, 1885.

A. B., of \_\_\_\_\_ is the owner in fee simple of (*description of property*), subject to the exceptions and qualifications mentioned in section 9 of *The Land Titles Act, 1885*, and numbered therein (*as the case may be, if the title is free from some of them*).

In witness whereof I have hereunto subscribed my name and affixed my seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_.

(Signed)

*Where title is Possessory, say :*

The title of *A. B.* is subject to the claims (if any) which can be enforced to the said land by reason of any defect in the title of *(name of the first registered owner.)*

*When the land is subject to a life estate, say :*

The title of *A. B.* is subject to the life estate of *G. H.*, of in the said land.

*And if subject to a mortgage, say :*

The title of *A. B.* is subject to a mortgage dated the day of , made by *A. B.* to *W. B.*, to secure \$3,000 and interest at the rate of 7 per cent. per annum from the 17th day of July, 1882, payable as therein mentioned. *(If mortgage is discharged, say :)* Discharged by Certificate No. *B.*, 1602.

*Where the land is subject to a lease, say :*

The title of *A. B.* is subject to a lease, dated the day of , made by *A. B.* to *Y. Z.*, for the term of ten years.

## 2.—Form of Certificate of Ownership.

LAND TITLES ACT, 1885.

This is to certify that *A. B.* is the owner (&c., in terms of the entry in the register.)

## 3.—Form of Application for first Registration of Owners.

LAND TITLES ACT, 1885.

*A. B.*, of etc., being entitled for his own benefit to an estate in fee simple in the land, in the township of , in the county of York, called or known as containing by estimation *(or as the case may be, according to sections 5, 71 or 72 of the Act, and described in the schedule hereto, or described as follows, as the case may be)* applies to be registered *(or where applicable, to have registered in his stead C. D., of etc.)*, as owner of such land, *(or leasehold land)* with *(in the case of freehold land)*, a Possessory title *(or with an Absolute title, or, in the case of leasehold land, with or without a declaration of the lessor's title to grant the lease, as the case may be.)*

The address of the said A. B. (and C. D. respectively) for service is as above (or if the application is made through a solicitor, at the office of such solicitor).

Dated this                      day of                      , 18                      .

(Signature of the applicant or his solicitor.)

The above mentioned C. D. (or the vendor, or the person whose consent is required to the execution of the trust or power to sell) hereby consents to the above application.

(Signature of C. D., or the vendor, or his solicitor, or of the other consenting parties.)

### 3.—Applicant's Affidavit.

LAND TITLES ACT, 1884.

I,                      of                      make oath and say :—

1. I am the absolute owner in fee simple in possession (or as the case may be, repeating the words of the application) of the following land (describing the property) being the land mentioned in my application.

2. There is no charge or other incumbrance affecting my title to the said land (except, stating any incumbrances which may exist).

3. I am not aware of any claim adverse to or inconsistent with my own to any part of the land claimed by me, or to any interest therein, (except, specify the adverse claim, if any, giving the name and address of the claimant if known and stating how the claim arises).

4. The deeds and evidences of title which I produce in support of my application, and of which a list is set out in the schedule of particulars produced by me in support thereof, and marked as exhibit A, are all the title deeds and evidences of title relating to the said land which are in my possession or power.

5. The title deeds and evidences of title relating to the said land which are set out or mentioned in the schedule hereto marked as exhibit B are in the possession or power of (naming the person.)

6. I do not know where, or in whose possession or power the title deeds and evidences of title set out or mentioned in the schedule marked as exhibit C are. For the said last mentioned title deeds I have caused the following searches to be made (set out the facts shewing the searches which have been made for the missing deeds and upon which it is intended to rely as sufficient to let in secondary evidence. Where there are no other title deeds, etc., except those named in Exhibit A., the fifth and sixth paragraphs of this form will be omitted).

7. I am (or A. B. is shew under what claim or title) in possession of the said land, and to the best of my knowledge and belief possession has always accompanied the title under which I claim, since the year                      when one                      through whom I claim took possession, and prior thereto the land was in a state of

nature, (if possession has not always accompanied the title under which the petitioner claims, state correctly the facts as to the actual possession.)

8. To the best of my knowledge, information and belief this affidavit and the other papers produced herewith in support of my application, and which are set forth in the said schedule of particulars, fully and fairly disclose all facts material to my title, and all contracts and dealings which affect the same or any part thereof, or give any right as against me. (*Vary these statements according to the facts*).

9. There are no arrears of taxes due upon the said land, nor has the said land been sold for taxes during the past year, nor under execution during the past six months, and I do not know of any writs of execution in the hands of the Sheriff against me, or affecting the said lands.

10. To the best of my knowledge, information and belief, no person or body corporate has any right of way, or of entry, or of damming back water, or of overflowing, or of placing or maintaining any erection, or of preventing the placing or maintaining any erection, on, in, to or over the said land, other than myself (except, giving the names and addresses of any parties having any easement or right, and stating the particulars and nature thereof), and the said land is not subject to any easement or dominant right whatever (*except as aforesaid*).

11. I am married, and the name of my wife is (or I am not married).

12. The value of the said land mentioned in paragraph one of this affidavit is not more than \$

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#### 4.—Certificate of Counsel.

LAND TITLES ACT, 1885.

I, \_\_\_\_\_ of \_\_\_\_\_ (Barrister, or Attorney at law), hereby certify that as (counsel or solicitor) for \_\_\_\_\_ I have investigated his title to, &c., set forth in his application, and believe him to be the owner of the estate which he claims in the application (*subject only to the charges and incumbrances therein set forth*).

I further certify that I have conferred with the applicant on the subject of the various matters set forth in his affidavit in support of his application, and believe the same to be true.

A. B.

5.—*Sheriff's Certificate.*

Sheriff's office, County of

day of

18

I hereby certify that I have not at the date hereof in my office any writ of execution against the lands of (or any or either of them) and that I have not had any such writ for thirty days preceding the date hereof.

I further certify that I have not sold lot \_\_\_\_\_ in the concession of the township of \_\_\_\_\_ under any writ of execution for six months preceding the date hereof.

F. W. J.,

Sheriff.

6.—*Affidavit of Publication of Advertisement.*

LAND TITLES ACT, 1885.

I, A. B., of, etc., make oath and say:

1. A true copy of the advertisement now produced and shewn to me and marked as exhibit A appeared and was published in the issue of the *Ontario Gazette* on the \_\_\_\_\_ day of \_\_\_\_\_

2. A true copy of the said advertisement also appeared and was published in each issue of the \_\_\_\_\_ newspaper on the \_\_\_\_\_ and \_\_\_\_\_ days of \_\_\_\_\_

3. I have examined copies of the said *Gazette* and newspaper issued on each of the said days.

Sworn, etc.

7.—*Affidavit of posting up the Advertisement in the Court House.*

LAND TITLES ACT, 1885.

I, A. B., of, etc., make oath and say:

1. I did on the \_\_\_\_\_ day of \_\_\_\_\_, post up and affix in a conspicuous place in the Court House in the town of \_\_\_\_\_, a true copy of the advertisement now produced and shewn to me and marked as exhibit A to this affidavit.

2. The said advertisement so posted up by me as aforesaid remained affixed up in the said place for the full period of one month, as I verily believe, (state the reasons for this belief).

3. The said Court House is the Court House of the County in which the lands in question in this matter are situated.

Sworn, etc.



8.—*Affidavit of posting up Advertisement at the nearest Post Office.*

LAND TITLES ACT, 1885.

I, *A. B.*, of, etc., make oath and say :

1. I did on the       day of       , post up in a conspicuous place in the post office, in the village of       , a true copy of the advertisement in this matter now produced and shewn to me and marked as Exhibit A.

2. The said advertisement remained where it was posted up by me continuously for the full period of one month, as I verily believe, (*state the reasons for this belief*).

3. The post office in the village of       is the post office nearest the land in question in this matter.

Sworn, etc.

9.—*Caution (under Section 58) after Registration.*

LAND TITLES ACT, 1885.

I, *A. D.*, of, etc., being interested in the land registered in the name of       under the number       in the       or in the charge registered the       day of       18       , in the name of *E. F.*, of, etc., on the lands, etc., (*as the case may be*), require that no dealing with such land (*or charge*) be had on the part of the registered owner until notice has been served upon me.

My address for service of notice is lot       , in the       concession, in the County of York, and my Post Office address is

Dated this       day of       , 18       .

*Signature of the cautioner or his solicitor.*10.—*Affidavit in support of Caution lodged under Section 58.*

LAND TITLES ACT, 1885.

I, *A. B.*, of, etc., make oath and say as follows :

1. The land (*or charge*) to which the Caution dated the       day of       , 18       , lodged by me at the office of the Master of Titles in the City of Toronto applies, is the land (*or charge*) registered the       day of       18       , in the name of       on the land) registered in the name of       under the No.       in the said office.

2. I am interested in such land (*or charge*), and the particulars of my interest are as follows (*here state particulars*.)

11.—*Charge or Mortgage.*

LAND TITLES ACT, 1885.

I, *A. B.*, the registered owner of the land entered under the Land Titles Act, 1885, in the register under the above number, in consideration of (\$2,000) paid to me, charge such land with the payment to *C. D.*, of, etc., on the       day of       18       , of the principal sum of (\$2,000) with interest at the rate of       per cent. per annum, and with a power of sale to be exercised after default, and       months' subsequent notice of the intention to sell, (or, as the case may be). (*Add any covenants which are agreed to and are not implied under the Act or otherwise.*)

Dated the       day of       18       ,

(*Signature of registered owner.*)

Witness,

*X. Y.*

NOTE—If no interest is to be payable, or no power of sale given, substitute the words "without interest," or "without a power of sale," as the case may be.

13.—*Transfer of Charge or Mortgage.*

LAND TITLES ACT, 1885.

I, *C. D.*, the registered owner under the Land Titles Act, 1885, of the charge dated the       day of       18       , and registered on the       day of       18       , on the land registered in the name of *A. B.*, under the above number, in consideration of (\$2,000) paid to me, transfer such charge to *E. F.*, of, etc., as owner.

Dated the       day of       18       ,

(*Signature of registered owner.*)

Witness,

*X. Y.*

14.—*Transfer of Freehold or Leasehold Land.*

LAND TITLES ACT, 1885.

I, *A. B.*, the registered owner of the land, or leasehold, entered in the register under the Land Titles Act, 1885, under the above number, in consideration of (\$3,000) paid to me, transfer such land to *C. D.*, of, etc.

Dated the       day of       18       ,

(*Signature of registered owner.*)

Witness,

*X. Y.*

15.—*Transfer of Freehold or Leasehold Land in Parcels.*

LAND TITLES ACT, 1885.

I, *A. B.*, the registered owner of the freehold (*or leasehold*) land entered in the register under No. , and registered with an Absolute title (*or with a Qualified title, or with a Possessory title, or, in the case of a leasehold, with a declaration that the lessor had an Absolute or Qualified title to grant the lease, or, without the declaration of the title of the lessor, as the case may be*) in consideration of (\$1,500) paid to me, transfer to *C. D.*, of, etc., the land (*or lease*) hereinafter particularly described, *or so much thereof, being part of the land now registered under No. etc.*

(Signature of registered owner.)

16.—*Form of Transfer by Endorsement.*

LAND TITLES ACT, 1885.

I, the within named *A. B.*, in consideration of \$ paid to me by *C. D.*, transfer to *C. D.* the within mentioned land  
Dated, etc.,

(Signature.)

(No seal necessary.)

Witness (as above.)

17.—*Form of Transfer of Charge or Mortgage.*

LAND TITLES ACT, 1885.

I, the within named *A. B.*, in consideration of \$ paid to me, do transfer to *C. D.* the within mentioned mortgage.  
Dated, etc.

(Signature.)

(No Seal necessary.)

Witness (as above.)

18.—*Transmission of Registered Ownership on death of Owner.*  
*Application under Sections 47 or 49.*

LAND TITLES ACT, 1885.

A. B., the registered owner of the land, (or charge, dated the day of 18 , on the land, etc., as the case may be) No. on the register, died on the day of 18 ; (or otherwise, as the case may be, within sections 47 or 49 of the Act); C. D., of etc., is entitled to the said land (or charge), and applies to be registered as the owner thereof accordingly.

The evidence in support of the above application consists of (here state the evidence to be lodged herewith.)

Dated the day of 18 .

(Signature of C. D. or his solicitor.)

19.—*Transmission of Registered Ownership.*

*Application under Section 46.*

A. B., the registered owner of the land No. on the register died on the day of 18 , (or otherwise, as the case may be); C. D., of, etc., being interested in the said land, applies to be registered (or to have E. F., of, etc., registered), as owner of the said land.

The interest of the said C. D., (or E. F.) and the existing rights of the several other persons interested in the said land, are stated in the affidavit\* of the said C. D. and G. H. of, etc., the solicitor of the said C. D., filed herewith, and the other evidence in support of this application is left herewith.

Dated the day of 18 .

(Signature of C. D. or his solicitor.)

\*Affidavit, etc., to be left with application.

20.—*Affidavit attesting Execution of Instrument and identifying Owner.*

LAND TITLES ACT, 1885.

I, G. H., of, etc., a Solicitor of the Supreme Court of Judicature, do make oath and say that I am well acquainted with A. B., the person named in the within document dated the day of 18 , that I saw him sign the said document; that the name A. B., at the foot thereof, is the handwriting of the said A. B.,

and that the said *A. B.* is the same person as *A. B.* who is named in the register as the owner of (the charge dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and registered the \_\_\_\_\_ day of \_\_\_\_\_,) the land entered on the register under the number \_\_\_\_\_, and that the said *A. B.* is of full age and under no legal disability.

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21.—*Form of Power of Attorney to make Transfers.*

LAND TITLES ACT, 1885.

I, *A. B.* do appoint *C. D.* my attorney to transfer to *E. F.* absolutely (or by way of mortgage, *as the case may be*) all my lands as entered and described in the register of estates under No. 129, and my estate therein.

*A. B.*

Witness (*as above.*)

*X. Y.*

(If such is the intention, add, that the power shall not be revoked by the death of the said *A. B.*, and the exercise of the same after his death shall be binding on his representatives).

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21.—*Form of Revocation of Power.*

LAND TITLES ACT, 1885.

I, *A. B.*, of \_\_\_\_\_, hereby revoke the power of attorney given by me to \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_.

In witness whereof, I have hereunto subscribed my name this day of \_\_\_\_\_

(*Signature of A. B.*)

Witness (*as above.*)

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## VESSELS.

Under this head it is not judged necessary to introduce more than such forms as are in most general demand among those engaged in maritime pursuits; the special forms connected with the various departments of Custom House business being all of them individual in their nature, and easily procured at the several ports as needed.

## FORMS.

*Bill of Sale of Vessel.*

Know all Men by these Presents, that Thomas Brown, of Halifax, in the Province of Nova Scotia, ship captain, owner of the schooner or vessel called *The Ariadne*, of the burden of four hundred tons or thereabouts, now lying at the Port of Kingston, Ontario, for and in consideration of the sum of five thousand dollars of lawful money of Canada, to him paid by James Jackson, of Halifax aforesaid, mariner, the receipt whereof he doth hereby acknowledge, hath bargained, sold and assigned, and by these presents doth bargain, sell and assign unto the said James Jackson, his executors, administrators and assigns, And Singular, the hull or body of the said schooner or vessel called *The Ariadne*, now lying at the said Port of Kingston, Ontario, together with the masts, yards, bowsprit, spars, standing and running rigging and gear, boats, anchors, chains, cables, blocks and all other necessities belonging or appertaining to the said schooner or vessel, which said schooner or vessel has been duly Registered at Toronto, Ontario, and the Certificate of such Registry is as follow:

(Copy Certificate of Registry.)

And on the back of such Certificate is also endorsed an account of the Shares held by each of the owners mentioned in such Certificate in the form following:—

*(Copy Endorsement.)*

To have and to hold the said schooner or vessel and all other the before mentioned necessities belonging or appertaining thereto unto the said James Jackson, his executors, administrators and assigns, to his and their own use and uses; and as his and their own proper goods and chattels from henceforth forever.

And the said Thomas Brown doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said James Jackson, his executors, administrators and assigns, in manner following, that is to say: That at the time of the ensealing and delivery hereof he hath in himself good right, full power and lawful authority to grant, bargain, sell, assign and set over the said schooner or vessel and all the necessities belonging or appertaining thereto unto the said James Jackson, his executors, administrators and assigns, in manner and form aforesaid: And that the said schooner or vessel and all other the necessities belonging or appertaining thereto and every part thereof now are and so from henceforth for ever shall be, remain and continue unto the said James Jackson, his executors, administrators and assigns free and clear and freely and clearly acquitted and discharged of and from all former bargains, sales, gifts, grants, titles, debts, charges and incumbrances whatsoever:

And further, that the said Thomas Brown, his executors and administrators shall and will from time to time and at all times hereafter at the requests, costs and charges of the said James Jackson, his executors, administrators and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, devices, conveyances and assurances in law whatsoever for the further, better and more effectually conveying, assigning and assuring the said schooner or vessel, and all the necessities belonging or appertaining thereto, and every part thereof, unto the said James Jackson, his executors, administrators or assigns as by him, them any or either of them, or his or their any or either of their Counsel in the Law shall be reasonably devised, advised and required.

In Witness whereof, I have hereunto set my hand and seal the day of January, in the year of our Lord one thousand eight hundred and eighty-seven.

Signed, sealed, and delivered  
in the presence of  
X. Z.

THOMAS BROWN. [L.S.]

*Mortgage of Vessel.*

For		Port of	
Record No.	Where Built.	When Launched.	Port of Registry
18,722.	Pictou, N. S.	2 August, 1882.	Halifax, N. S.
Measurement.		Tonnage and Name.	
Length ....	62 .... feet	Tonnage	200
Breadth ..	17 .... feet	Name	<i>Flora McAllister.</i>
Depth ....	9 .... feet		

To all to whom these Presents shall come—Greeting :

Whereas : (*State nature of Mortgage Debt and the transaction between Mortgagor and Mortgagee out of which it arises, as*) J. S. of, etc., mariner, the owner of the above named schooner the *Flora McAllister*, hath borrowed of A. B. of, etc., the sum of \$800, and it hath been agreed between them that the said schooner shall be mortgaged to secure such debt. Now, therefore, the undersigned J. S. in consideration of the premises, for himself and his heirs, covenants with the said A. B., and his assigns, to pay to him or them the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner following, that is to say : in one year from date, with interest at ten per cent. ; and for better securing to the said A. B. the payment of such sums as last aforesaid the said J. S. doth hereby mortgage to the said A. B. the ship above described.

Lastly, J. S., for himself and his heirs, covenants with the said A. B., and his assigns, that he hath power to mortgage, in manner aforesaid, the above-mentioned ship, and that the same is free from incumbrances. (*If any incumbrances, add "save as appears by the record of the said ship."*)

In witness whereof, we have hereto subscribed our names and affixed our seals at Pictou, N.S., this       day of June, one thousand eight hundred and eighty-six.

Executed by the above-named }  
in the presence of }

J. S. [L.S.]  
A. B. [L.S.]

*Transfer of Mortgage.*

I, A. B., of, etc., the within mentioned mortgagee, in consideration of eight hundred dollars this day paid to me by E. F., of, etc.,



hereby transfer to him the benefit in full of the within written security.

In Witness whereof, I have hereunto subscribed my name and affixed my seal, this tenth day of November, one thousand eight hundred and eighty-six.

Executed by the above named

A. B.,  
in the presence of  
X. Z.

A. B. [L. S.]

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*Discharge of Mortgage.*

Received the sum of eight hundred and fifty dollars in discharge of the within written security.

Dated at Charlottetown, P. E. I., this fourth day of January one thousand eight hundred and eighty-seven.

Witness, etc.

A. B.

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## WILLS.

A WILL, or Testament, is a writing by which the owner of property declares how he wishes his property to be disposed of after his death. When a man makes a will he is called a *testator*; and when a woman makes a will she is called a *testatrix*. A person who dies without making a will is said to die *intestate*. The person to whom a will bequeaths a legacy is called a *legatee*, and he to whom it devises land is called a *devisee*. A will may be written on paper, parchment, or any other material, and in any hand; but it must be legible and intelligible. No precise form of words is essential to its validity, but great care should be taken that the wishes of the testator be expressed in plain, clear, terms.

Any person twenty-one years of age or over, and of sound and disposing mind and memory, who is not at the time under the influence of fear, fraud, or coercion, is competent to make a will. The wills of persons of sound mind are not affected by their subsequent insanity. All wills, save as hereinafter mentioned, whether of personal or real estate, require to be in writing.

No will takes effect until the death of the testator. It may be rendered void by cancellation or revocation, or by the execution of a will of later date. The will is revoked if the testator destroy it by burning, tearing, etc., with intent to revoke it, or if some other person do so by his direction. The subsequent marriage of the testator will revoke a will previously made. To pass real estate the will must be made in accordance with the laws of the country where such real estate is

situated; but to effect personal property it need only be in accordance with the law of the country of the testator's residence or domicile.

A will must be signed at the foot or end thereof, by the testator, or for him by some other person in his presence and by his direction. A testator who is unable to write, may have his hand guided in making a mark against his name if he understands the purport of what is being done and assents to the act. The testator must make or acknowledge the signature in the presence of two or more witnesses present at the same time, and such witnesses must attest and must write their names to the will in the presence of the testator. No seal is necessary to a will, though it is customary to attach one; nor is any special form of memorandum or certificate of attestation necessary, though it is well to write the following form, which will generally answer: "Signed, published and declared by the said A. B. as and for his last will and testament in the presence of us, both present at the same time, who at the request of the said A. B. and in his presence, and in the presence of each other, have hereunto set and subscribed our names as witnesses." It is well to write the residence and occupation of each witness beneath his signature, as he may be called upon to make oath when the will is proved. Care must be taken that only parties who take nothing under the will should be witnesses, as otherwise the devise or bequest to the witness or to the husband or wife of the witness is void. Creditors of the testator may be witnesses without defeating bequests for payment of their debts, and executors may be witnesses; but it is best to choose others. The witnesses should note well the mental and physical

condition of the testator, and satisfy themselves that he fully understands the will and what is being done.

The will should begin with a statement of the name, *occupation and residence*, of the testator. The full name of the devisees or legatees should also be given, and, if necessary to prevent mistakes where there are two of the same name, their occupation or residence, or such other description as may obviate all misunderstanding. The testator may know well enough, when he bequeaths a legacy to "John," or "Maria," whom he means, but if there are two "Johns" or two "Marias" among his relatives (which may not be unlikely) disputes may arise. A devise to "children" will not include illegitimate children.

A devise or bequest to a wife in lieu of her dower must be clearly so expressed, or she may be held entitled to both. No devise or bequest can deprive her of her dower if she prefers to take the latter; she has her choice between her dower and the bequest.

By what are called the Statutes of Mortmain, no lands, or money to be laid out in the purchase of lands, can be given by will to any religious or superstitious uses, though this may be done by deed executed and deposited as required by the Statutes.

A man can leave but one will, though he may execute many codicils to it, the more recent of which govern the former. Hence, the dating of the will, and of each codicil, must never be omitted. If two wills are left by the testator, and neither is dated, neither will takes effect, and there is an intestacy.

The will is construed as though the testator made it immediately before his death, unless a contrary intention clearly appears on the face of the will.

If the same estate is devised by the same will to two different parties, they will divide it in equal shares.

Alterations in a will by interlineations will not affect its validity, but to take effect they must be initialled in the margin of the will, opposite where they occur, by the testator and the witnesses, to show that they were made before the will was signed; or they may be referred to in the attestation clause, or in a memorandum in another part of the will attested as before mentioned.

The only kind of will which does not require to be in writing, is what is called a *noncupative* will. This is a will which is made by the verbal declarations of the testator, and depends for proof merely upon oral testimony, though it is, after the testator's death, reduced to writing. It may be made only by a soldier in actual military service or by a mariner at sea. It affects personal property only.

A *codicil* is a supplement, or an addition, made to a will by the testator, intended for a further explanation or alteration of the will, or to make some addition to or subtraction from the former dispositions of the testator. It may be written upon the same paper as the will, or upon a separate sheet, and it may be left attached to the will or separate in another place, though it is best to attach it. It should be executed in the same manner, and with the same formalities, as the original will, and should be read as part of it. It may be also noncupative, under the same circumstances that a will may be.

In every will of personalty, there should be an appointment of some person or persons as executor

or executrix. A married woman may be appointed executrix of her husband's will.

In selecting executors, regard should be had to their trustworthiness, as the estate is very much in their control, and they have not, generally, to give bonds as have administrators. They should be, if possible, men of reputation and of business habits, and acquainted to some extent with the business affairs of the testator.

Any person may be appointed executor; but if a person under twenty-one be appointed, he will not be allowed to exercise the office during his minority; and during this time the administration of the goods of the deceased will be granted to the guardian of the infant, or to such other person as the Surrogate Court may think fit.

There is this difference between a will of lands and a will of personal property. Under the former, in the absence of contrary statutory provisions, the devisee, or person to whom the land is given, takes the land direct, without the intervention of any executor; while, on the other hand, a legatee of personal property can only get the same through the executor or administrator. The moment a testator dies, the executor becomes entitled to the possession of the whole of the personal property, and is bound to see that all the testator's debts are paid, before he pays a single legacy, or parts with any of the property to the legatees to whom it may be given. In those Provinces, however, where, as in Ontario, real estate now descends to the executor, or personal representative, for the payment of debts, the distinction between real and personal property, in matters of descent, is less clearly marked than it formerly was.

Before an executor can act, he should get himself

lawfully clothed with the necessary authority. This he does by *proving* the will. Wills must be proved in the Surrogate or other proper Court of the county where the testator had, at the time of his death, his fixed place of abode; and if he had no fixed place of abode in, or resided out of the Province, at the time of his death, then in the Court of any county in which he had any personal or landed property. The first thing, then, for an executor to do is, to take the will to the clerk of the proper Court; there the necessary affidavits and documents can be filled up and the will proved in due form.

When the will has been proved, it is the duty of the executor to pay the testator's debts out of the personal estate, to which such executor becomes entitled by virtue of his office. For this purpose the executor has reposed in him by the law the fullest powers of disposition over the personal (and in some Provinces certain powers over the real) estate of the deceased, whatever may be the manner in which it has been bequeathed by the will. If he suspects there are debts or claims of which he has not accurate knowledge, he should advertise for them to be sent in to him for payment. When the debts have been paid, the legacies left by the testator are then to be discharged. In order to give the executor sufficient time to inform himself of the state of the assets and to pay the debts of the deceased, he is allowed a twelvemonth from the date of the death of the testator, before he is bound to pay any legacies. Notwithstanding the lapse of a year from the testator's death, the executor is still liable to any creditor of the deceased to the amount of the property which may have come to the executor's hands; and if he should have paid any legacies in ignorance of the claims of the creditor, his

only remedy is to apply to the legatees to refund their legacies, which they will be bound to do, in order to satisfy the debt. From this liability to creditors an executor cannot be discharged, unless he throw the property into Court, in which case the Court undertakes the administration, and the executor is consequently exonerated from all risk. The executor, however, is, of course, not answerable to the testator's creditors beyond the amount of property which has come to his hands, unless he should, for a sufficient consideration, have given a written promise to pay personally, or should do any act amounting to an admission that he has property of the testator sufficient for the payment of the debts. In Ontario, however, after advertising for claims of creditors, he may, by statute, be exempt from personal liability to creditors who neglect, after due notice, to inform him of their claims, and of whose claims he has no notice.

After payment of the testator's debts and legacies, the residue of his personal estate must be paid over to the residuary legatee, if any, named in the will; and if there be no residuary legatee, then to the testator's next of kin.

When a person dies without making a will, his property is then distributed according to the provisions of the Acts of the legislature passed to regulate such matters. In Ontario, the lands of a person dying intestate descend first to all his children, sons and daughters, equally, and if any child should be dead leaving children, these grand-children will stand in their parent's place and be entitled to the share which would have fallen to their parent, had such parent been alive. Failing children, the lands will go to the intestate's father;



and if the father be dead, then to the mother; and if the mother be dead, then to the brothers and sisters and collateral relatives. If, however, the land came to the intestate in right of his mother, then, upon his death without children, such land will revert to the mother if living, and if dead, to the father for life, and then to the brothers and sisters.

With regard to personal property, under the Statutes of Distributions, if the intestate leave a widow and any child or children, the widow shall take a third part of the surplus of his effects. If he leave no child or descendant of a child, she takes one-half. If the intestate leave children, two-thirds of his effects, if he leave a widow, or the whole if he leave no widow, shall be equally divided among his children, or, if but one, to such child. If the intestate leave no children or representatives of them, his father, if living, takes the whole: or, if the intestate should have left a widow, then one-half. If the father be dead, the mother, brothers and sisters of the intestate shall take in equal shares, subject, as before, to the widow's right to a moiety. If there be no brother or sister, the mother shall take the whole, or, if the widow be living, a moiety only, as before; but a step-mother can take nothing. The children of brothers or sisters who are dead stand in their parent's place.

If a married woman is possessed of property, real or personal, she may dispose of the same by her will to whom she pleases. The separate personal property of a married woman dying intestate is to be distributed in the same proportions between her husband and children as the personal property of a husband dying in-

testate is to be distributed between his wife and children.

When a person dies intestate, any of the next of kin (and failing them, a creditor), as explained in a previous chapter, may obtain letters of administration, from the Surrogate or other proper Provincial Court, which will clothe the party obtaining such letters with the same authority that an executor has. An administrator's duties and liabilities are precisely the same as those of an executor, save that an administrator must give a bond for the due performance of his duties, which, as a rule, an executor need not do. Where a will appoints no executor, an administrator with the will annexed will be appointed.

Every codicil revokes and alters the will and earlier codicils in so far as its directions, devises and bequests change those of the will and of the earlier codicils. But if a legacy be revoked under mistake of fact, as if the testator revokes under the erroneous impression that the legatee is dead, whereas in fact he is alive, the revocation is void.

A father may, by his will, appoint a guardian to his child or children, who shall have custody of their persons and estates until they reach full age.

Wills in Ontario made before and not re-executed or revived after the 1st January, 1874, are governed by rules slightly different from those above set out, but it is not deemed necessary in this treatise to explain them.

In Ontario, lands which are at the testator's death encumbered by mortgages, pass subject to them, and the devisee cannot call upon the executors to pay off the mortgages out of the personal estate, unless the will specially directs it.

Where the testator leaves real or personal property

to a child or grandchild, and such child or grandchild dies before the testator, leaving issue, the devise or bequest may be taken by the latter.

Wills may be deposited for safe keeping with the clerk of the Surrogate Court in any county in Ontario, upon payment of a small fee. Upon the death of the testator they may be proved before the same official, and may be registered, if they affect lands, in the proper Registry office.

By the statute law of Manitoba, a *holograph* will, or one wholly written and signed by the testator himself, shall, in that Province, be subject to no particular form, nor shall it require an attesting witness or witnesses.

In New Brunswick, a married woman may, with the consent of her husband, make a will, such consent to be expressed in writing on the will, and executed in like manner. Such consent cannot be revoked by the husband save in the wife's lifetime, and with her consent in writing, executed in like manner. But the wife may revoke or cancel the will without her husband's consent, by any writing executed like a will, or by burning, tearing, etc., the document, with intention to revoke.

The general law of Prince Edward Island is similar to that of other Provinces. Wills in that Province must be proved within a certain fixed time from the death of the testator ;—thirty days after the death of the testator where the executor is resident in the Province, and six months after notification to the executor where the executor is non-resident in the Province. The Surrogate may order executors to give security to the estate if this is reasonably requested by a creditor or legatee.

## FORMS.

*Short form of Will.*

This is the last Will and Testament of me, A. B., of, &c., made this day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_, as follows:

I give, devise and bequeath all my messuages, lands, tenements and hereditaments, and all my household furniture, ready money, securities for money, money secured by life assurance, goods and chattels, and all other my real and personal estate and effects whatsoever and wheresoever, unto C. D., his heirs, executors, administrators and assigns, to and for his and their own absolute use and benefit, according to the nature and quality thereof respectively; subject only to the payment of my just debts, funeral and testamentary expenses, and the charges of proving and registering this my will. And I appoint E. F., of \_\_\_\_\_, executor of this my will; and hereby revoking all other wills, I declare this only to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

A. B. [L.S.]

Signed, sealed, published and declared by the said A. B., the testator, as and for his last will and testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names, as witnesses to the due execution thereof.

R. S.

X. Z.

*General form of a Will disposing of Real and Personal Estate, in Legacies.*

I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, gentleman, being of sound and disposing mind and memory, do make and publish this my last Will and Testament, hereby revoking all former Wills by me at any time heretofore made.

1st. I hereby constitute and appoint my wife, E. T., to be sole executrix of this my last will, directing my said executrix to pay all my just debts and funeral expenses, and the legacies hereinafter given, out of my estate.

2nd. After the payment of my said debts and funeral expenses, I give to each of my children the sum of \_\_\_\_\_ dollars, to be paid to each of them as soon after my decease, but within one year, as conveniently may be done.

3rd. And for the payment of the legacies aforesaid, I give and devise to my said executrix all the personal estate owned by me at my decease (except my household furniture and wearing apparel), and so much of my real estate as will be sufficient; in addition to the said personal estate herein given, to pay the said legacies.

4th. I give to my said executrix all my household furniture and wearing apparel, for her sole use.

5th. I devise to my said executrix all the rest and residue of my real estate, as long as she shall remain unmarried, and my widow, with remainder thereof, on her decease or marriage, to my said children and their heirs respectively, share and share alike.

In witness whereof, I have hereunto set my hand and seal, this day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_

A. B. [L.S.]

Signed, published and declared by the said A. B., as and for his last will and testament, in the presence of us, who in the presence of each other, and at his request, have subscribed our names as witnesses hereto.

C. D.

R. S.

### *Codicil to a Will.*

This is a codicil to the last Will and Testament of me, A. B., of &c., bearing date the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18\_\_\_\_, (the date of the will.)

I do hereby revoke the bequest of all my household furniture to my son John, and do give and bequeath the same to my daughter Jane, to and for her own absolute use and benefit forever.

I give and bequeath to my daughter Mary, in addition to the legacy bequeathed to her by my said Will, the further sum of \$400.

In all other respects I do confirm my said Will.

In witness whereof, I have hereunto set my hand and seal, this day of \_\_\_\_\_, A.D. 18\_\_\_\_.

A. B. [L.S.]

Signed, published and declared by the said A. B., the testator, as and for a codicil to his last Will and Testament, in the presence of us, both present at the same time, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution hereof.

R. S.

X. Z.

*Nuncupative Will.*

In the matter of the Nuncupative Will of Thomas Atkins, deceased. On the third day of May, in the year one thousand eight hundred and—, Thomas Atkins, Sergeant in Her Majesty's Regiment of foot, being *in extremis* in his last sickness, in his tent or dwelling, situate in ——— etc., [*describing the situation ; if in the dwelling of another, so stating and describing*], in the presence of the subscribers, did declare his last Will and Testament in the following words, or to that effect, viz. :—

"He mentioned that he had about one hundred pounds in the Scottish and Colonial Bank of Birmingham, and ten pounds in the hands of Captain Loftus Hay." He then said, "I want Captain Hay to act as my trustee and executor, and put it out at interest for my mother's use during her life, and after her death, to go to my sisters. All my other property I want my mother to have for her separate use."

At the time the said Thomas Atkins pronounced the foregoing will, he was of sound and disposing mind, memory, and understanding, and did bid us who were present, to bear witness that such was his Will.

Reduced to writing this fifth day of May, in the year one thousand eight hundred and—.

JOHN BROWN.  
EDWARD BAKER.  
SAMUEL NELSON.

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## DICTIONARY OF LAW TERMS IN COMMON USE.

- ABATE.** To *abate* a nuisance is to cause it to be discontinued.
- ADMINISTRATOR DE SON TORT.** One who intermeddles with an estate without proper authority.
- AGISTMENT.** Pasturage of cattle.
- ALIAS.** A term applied to a second writ issuing for the same purpose as a prior writ.
- ALIBI.** In another place.
- A MENSA ET THORO.** From bed and board; a judicial separation of man and wife which does not annul the marriage.
- AMICUS CURIAE.** Friend of the Court; a bystander in Court who may suggest to the Court matters of fact or law for its guidance.
- ANNO DOMINI.** The year of Our Lord.
- ASSETS.** Property of any kind which may be found to belong to the estate of an insolvent or a deceased person liable to the payment of debts.
- ASSIGNEE.** One to whom property is assigned. In bankruptcy, a person appointed to take charge of the debtor's estate.
- ASSIZES.** Sittings of the Courts (generally twice a year) in each county, for the disposal of criminal and civil business.
- ATTACHMENT.** The arrest of a person or seizure of his goods under process of law.
- A VINCULO MATRIMONII.** A divorce which absolutely dissolves a marriage.
- BAILMENT.** The receiving and keeping of goods by one for another.
- BILL OF LADING.** A memorandum signed by the masters or captains of vessels acknowledging the shipment of goods.
- BLACKMAIL.** To levy blackmail is to extort money by threats of publishing injurious matter, or of criminal proceedings.
- BONA FIDE.** In good faith.
- CAPIAS.** A writ authorizing an arrest of a person.
- CAUSA MORTIS.** On account of death.
- CAVEAT.** "Let him take heed;" a warning.
- CEPI CORPUS.** The return endorsed by a sheriff upon a writ of arrest.
- CERTIORARI.** A writ directing the proceedings or record of a cause to be brought before a higher Court.
- CESTUI QUE TRUST.** The party in whose interest a trustee holds property.
- COMPOS MENTIS.** Of sound mind.
- CONTRA BONOS MORES.** Inconsistent with good morals.



COVERT. Married.

CRIM. CON. Criminal conversation; adultery.

CURTESY OF ENGLAND. A tenancy by the curtesy is the right of a widower to enjoy for life the lands left by his deceased wife.

CURTILEGE. A court yard.

DE FACTO. Actually existing.

DE JURE. According to law.

DE NOVO. Anew; from the beginning.

DEPOSITIONS. Written testimony taken down upon a legal investigation.

DETINET. "He detains;" a form of action at law to recover possession of specific property.

DEVASTAVIT. "He has wasted;" wasteful and improper conduct of administrators with estates.

DIES NON. A legal holiday.

DOMICILE. The place where a man habitually resides.

DONATIO MORTIS CAUSA. A gift of personal property made in contemplation of death and by manual transfer.

EASEMENT. A right to do some act upon the land of another.

EMBLEMAT. The profits of land, as grass, fruit and crops.

ENCIENTE. Pregnant.

ENTAIL. Property descending to heirs of the body only.

ESCHEAT. Property reverting to the Crown.

ESCROW. A deed signed, but left with another to be delivered upon performance of some stipulated act by the grantee.

ESTOPPEL. A bar to an action arising from a man's own act or deed.

ESTRAY. An animal straying upon the highway or on another's lands.

ESTREAT. Where the condition of a bail-bond is broken, the bond is *estreated* that payment of the penalty may be enforced.

EX OFFICIO. By virtue of the office.

EX PARTE. On one part; without participation of both parties.

EX POST FACTO. After the act has been done.

EX TEMPORE. Off-hand; without premeditation.

FELO DE SE. A suicide.

FEME COVERT. A married woman.

FROFFMENT. A deed of grant of lands.

FERAE NATURAE. Animals and birds *ferae naturae* are such as are wild and not capable of being domesticated.

FIAT. An imperative command or decree.

FIERI FACIAS. A writ of execution.

FLOTSAM. Goods found floating in the sea.

FORMA PAUPERIS. A poor person is sometimes allowed by the Courts to bring suit in this manner, without payment of fees.

**FORUM.** A Court of Justice.

**FRANCHISE.** A privilege or exemption.

**GARNISHMENT.** The attachment of debts due a debtor in the hands of his creditors.

**HABEAS CORPUS.** A writ whereby the legality of any imprisonment may be enquired into.

**HALF BLOOD.** Where the relationship proceeds from a single ancestor only: thus two brothers having the same father but different mothers, or vice versa, are of the half blood.

**HOTCHPOT.** Bringing all moneys into one sum or account for equal division.

**INCEST.** Illicit intercourse within the prohibited degrees of consanguinity.

**IN ESSE.** In being.

**IN EXTREMIS.** In immediate danger of death.

**IN POSSE.** Within probability.

**IN PROPRIA PERSONA.** In one's own person.

**IN TERRORUM.** By way of warning or menace.

**IN TRANSITU.** On the passage.

**IN VENTRE SA MERE.** The condition of a child begotten but not born before the death of the father.

**IPSO FACTO.** By that fact.

**IPSO JURE.** By the law itself.

**JOINT TENANTS.** Are such as possess a common title to the same land.

**JOINTURE.** Lands or money set apart for the support and maintenance of a woman, to take effect after her husband's death.

**JURAT.** The memorandum or certificate appended to an affidavit to show when, where, and before what officer it was sworn.

**JURE GENTIUM.** By the law of nations.

**JUSTIFYING BAIL.** If exception be taken to the bail offered by a person arrested, the bail must *justify*, by proving on oath that they are possessed of sufficient property, are resident freeholders or householders, etc.

**LACHES.** Negligence or culpable delay in prosecuting legal rights.

**LEVARE FACIAS.** A writ of execution against goods and chattels.

**LEX TALIONIS.** The law of retaliation in kind.

**LIVERY OF SEISIN.** The delivery, or handing over from one to another, of the possession of lands.

**LOCO PARENTIS.** In the place of the parent.

**LOCUS SIGILLI.** (commonly abb. L. S.) The place of the seal.

**MALFEASANCE.** A wrongful act.

**MALUM IN SE.** Bad in itself; that which is forbidden by natural or moral justice.

**MALUM PROMIBITUM.** Bad because forbidden; that which is forbidden by express statutory or common law.

**MANDAMUS.** A peremptory writ to enforce the fulfilment of a duty.

**MESNE.** Middle; intervening.

**MESSUAGE.** The legal term for a house.

**MISFEASANCE.** A wrongful act.

**MITTIMUS.** A precept, under the hand and seal of a magistrate, for the imprisonment of an offender.

**MUTATIS MUTANDIS.** Changing what ought to be changed.

**MYSTERY.** An art, trade, craft or occupation.

**NE EXEAT PROVINCIA.** A writ to arrest a debtor about to abscond from the province.

**NEMINE CONTRADICENTE.** None dissenting.

**NISI PRIUS.** A court where actions are tried before a judge and jury.

**NOLLE PROSEQUI.** A discontinuance of further proceedings in criminal cases.

**NON EST INVENTUS.** The return of a sheriff endorsed upon a summons or subpoena where the party is not found in his bailiwick.

**NUDUM PACTUM.** A contract invalid at law.

**ONUS PROBANDI.** The burden of proof.

**OVERT.** Open, public.

**OYER AND TERMINER.** To hear and to determine; Superior Courts for the trial of criminal offences.

**PARAPHERNALIA.** The wearing apparel, jewels, etc., of a wife or widow, which she is entitled to retain at her husband's death in addition to her dower and jointure.

**PAROL.** By word of mouth, verbally; not under seal.

**PARTY WALL.** A wall used jointly by two tenements which it separates.

**PER CAPITA.** "By the heads;" share and share alike.

**PER SE.** By himself, or itself.

**PLOUGH BOTE.** The right of a tenant to cut sufficient timber to make and repair implements of husbandry.

**PLURIES.** "Very often;" a third writ, after two have issued against a defendant.

**POSSE COMITATUS.** A body of citizens summoned by the sheriff to assist him in maintaining the public peace, or enforcing the law.

**POSTEA.** "Afterwards;" the endorsment of the verdict upon the record.

**POST MORTEM.** After death.

**PRIMA FACIE.** At first glance.

**PROCHIN AMI.** The next (or nearest) friend.

**PROHIBITION.** A writ whereby a Superior Court stays proceedings in an inferior.

- PRO RATA.** According to the proportion or allowance.
- PRO TANTO.** For so much.
- PUISNE.** A name applied to judges of Superior Courts who are not chief justices.
- PUR AUTRE VIE.** For the life of another.
- PURVIEW.** The preamble to a statute.
- PUTATIVE.** Suspected.
- QUAMDIU SE BENE GESSERIT.** During good behaviour.
- QUANTUM MERUIT.** As much as he has earned.
- QUANTUM VALEBAT.** As much as it is worth.
- QUARE CLAUSUM FREGIT.** "Why he broke the close;" the name of an action brought for trespass to land.
- QUASH.** To set aside; to nullify.
- QUI TAM.** A proceeding by an informer to recover a penalty imposed upon, or reward given by a penal statute.
- QUO ANIMO.** With what intent.
- QUORUM.** The number of persons whose presence is required before a legislative or corporate body can proceed to act.
- QUO WARRANTO.** By what authority; a writ to determine the right or ownership of a franchise or office.
- REALTY.** Real property; lands, houses, etc.
- RECORD.** A copy of the pleadings in an action at law preserved in Court for reference.
- RELATOR.** An informer.
- REMAINDER.** What is left of an estate in fee of lands after a smaller estate has been granted out of it.
- REMANET.** A cause left undisposed of at an assize.
- RES INTEGRA.** An entire matter.
- SCINTILLA.** A spark; a very small quantity.
- SCIRE FACIAS.** "That you declare;" a writ commanding a party to show cause why a certain thing should not be done.
- SEISIN.** Possession.
- SEQUESTRATION.** A process employed by Courts of Equity for enforcing obedience to their decrees, whereby the delinquent party is deprived of his entire estate.
- SET-OFF.** The mutual liquidation of opposing demands.
- SEVERALTY.** An estate *in severalty* is one held by a single person independent of any claim thereto by another.
- SEVERANCE.** The cutting and carrying away of grain.
- SINE DIE.** Without day; where no day is, at the adjournment of a meeting, appointed for its reassembling, it is said to adjourn *sine die*.
- Ss. (SCILICET).** To wit; namely.
- SPECIALTY.** A contract under seal.
- SPINSTER.** Any unmarried woman.
- SUBPOENA.** A writ to compel witnesses to attend a trial.

**SUI GENERIS.** Of its own kind.

**SUMMONS.** A mandate from a justice of the peace to an accused person, requiring the appearance of the latter.

**SUPERSEDEAS.** A writ to stay proceedings.

**TENDER.** An offer of money to be accepted in full of a claim.

**TENEMENT.** A house dwelling.

**TERRE TENANT.** The person having actual possession of land.

**TORT.** A wrong or injury independent of contract.

**TROVER.** An action at law to recover goods or their value.

**USANCE.** Interest; usury.

**VENDITIONI EXPONAS.** A writ of execution.

**VENDOR.** A seller.

**VENDEE.** One to whom a thing is sold.

**VENIRE.** A writ directing a sheriff to summon jurors.

**VENUE.** The place from which the jury are summoned.

**VICE VERSA.** On the contrary.

**VI ET ARMIS.** By force and arms unlawfully.

**VIVA VOCE.** Verbally.

**VOIRE DIRE.** A witness who is suspected of being incompetent to give evidence at a trial, as by reason of partiality or otherwise, may be examined upon the *voire dire* before being examined in chief.

**WAIVER.** The omission to avail one's self in proper time of a legal right or claim.

**WARRANT.** A written authority or precept under the hand and seal of a justice of the peace, empowering a constable to make an arrest, search for stolen goods, etc.

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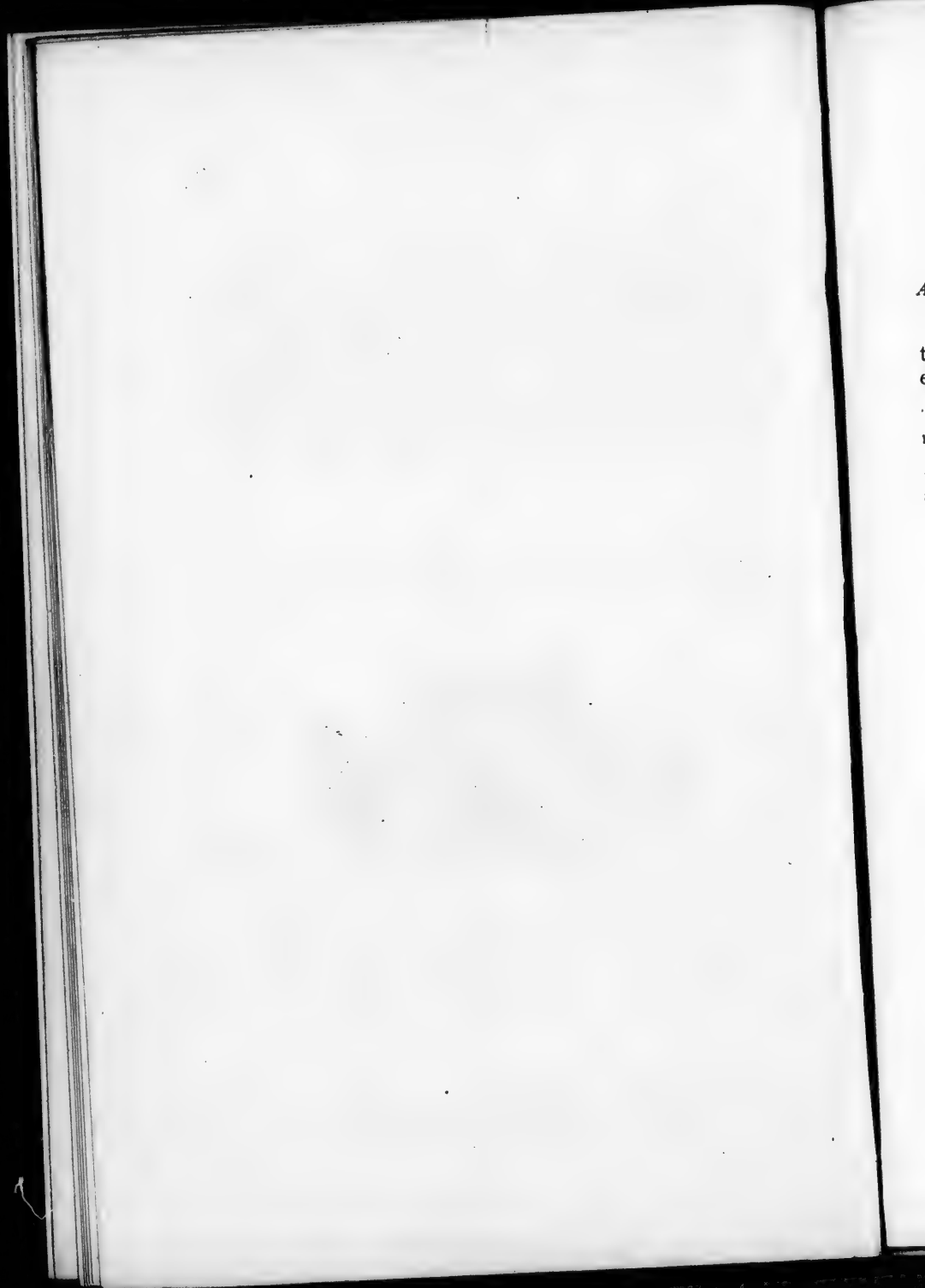
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*An Act relating to Exemptions from seizure under Execution.* 1887)

Her Majesty, by and with the advice and consent of the Legislative Assembly, of the Province of Ontario, enacts as follows :—

1. Section 2 of *The Act respecting Writs of Execution* is hereby repealed, and the following substituted therefor :

2. The following chattels are hereby declared exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever, in this Province, namely :

1. The bed, bedding and bedsteads (including a cradle), in ordinary use by the debtor and his family ;

2. The necessary and ordinary wearing apparel of the debtor and his family ;

3. One cooking stove with pipes and furnishings, one other heat ing stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking-glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one tea pot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this subdivision enumerated, not exceeding in value the sum of \$150.

4. All necessary fuel, meat, fish, flour and and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of \$40.

5. One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of \$75, and food therefor for thirty days, and one dog ;

6. Tools and implements of or chattels ordinarily used in the debtor's occupation, to the value of \$100 ;

7. Bees reared and kept in hives to the extent of fifteen hives.  
See Rev. Stat. c. 96, s. 2.

**2.** The debtor may in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in subdivision 6 of section 2 of said Act elect to receive the proceeds of the sale thereof up to \$100, in which case the officer executing the writ shall pay the net proceeds of such sale if the same shall not exceed \$100, or, if the same shall exceed \$100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under said subdivision 6, and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor.

**3.** Section 6 of the said Act is hereby repealed, and the following substituted therefor:

6. Notwithstanding anything contained in the next preceding four sections, the various goods and chattels which are now liable to seizure in execution for debt shall, as respects debts which have already been or shall be contracted prior to the first day of October, 1887, remain liable to seizure and sale in execution provided that the writ of execution under which they are seized has endorsed upon it a certificate signed by the Judge of the Court out of which the writ issues certifying that it is for the recovery of a debt contracted before the date hereinbefore mentioned.

**4.** This Act shall take effect on, from and after the first day of October, 1887.

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*An Act respecting Distress for Rent and Taxes. (1887).*

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

**1.**—(1) The goods and chattels exempt from seizure under execution, shall not be liable to seizure by distress by a landlord for rent in respect of a tenancy created after this Act comes into force, except as hereinafter provided; nor shall such goods be liable to seizure by distress by a collector of taxes accruing after this Act comes into force, unless they are the property of the person actually assessed for the premises, and whose name also appears upon the collector's roll for the year as liable therefor.

2. The person claiming such exemption shall select and point out the goods and chattels as to which he claims exemption.

**2.** A landlord shall not distrain for rent on the goods and chattels the property of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favor of a person claiming title under or by virtue of an execution against the tenant, or in favour of any person whose title is derived from any purchase, gift,

transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to goods on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord; nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or of any other relative of his, in case such other relative lives on the premises as a member of the tenant's family.

2. Nothing in this section contained shall exempt from seizure by distress goods or merchandise in a store or shop managed or controlled by an agent or clerk for the owner of such goods or merchandise when such clerk or agent is also the tenant and in default and the rent is due in respect of the store or shop and premises rented therewith and thereto belonging, when such goods would have been liable to seizure but for this Act.

3. The word "tenant" in this section shall extend to and include the sub-tenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether he has or has not attorned to or become the tenant of the landlord.

4. In case of an assignment for the general benefit of creditors the preferential lien of the landlord for rent is restricted to the arrears of rent due during the period of one year last previous to the execution of such assignment, and from thence so long as the assignee shall retain the premises leased.

**3.** A tenant may set-off againsts the rent due a debt due to him by the landlord.

2. The set-off may be by a notice in the form or to the effect following, and may be given before or after the seizure:

Take notice, that I wish to set-off against rent due by me to you, the debt which you owe to me on your promissory note for dated (or for eight months' wages at \$20 per month, \$160.) (or as the case may be).

In case of such notice the landlord shall only be entitled to dis-train for the balance of rent after deducting any debt justly due by him to the tenant.

**4.** A tenant who is in default for non-payment of rent and claims the benefit of the exemption to which he is entitled under this Act, must give up possession of the premises forthwith, or be ready and offer to do so.

2. The offer may be made to the landlord or to his agent; and the person authorized to seize and sell the goods and chattels, or having



the custody thereof for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of the possession.

3. The surrender of possession in pursuance of the landlord's notice shall be a determination of the tenancy.

4. Where a landlord desires to seize the exempted goods, he shall, after default has been made in the payment of rent and before or at the time of seizure serve the tenant with a notice which shall inform tenant what amount is claimed for rent in arrear, and that in default of payment, if he gives up possession of the premises to the landlord after service of the notice, he will be entitled to claim exemption for such of his goods and chattels as are exempt from seizure under execution, but that if he neither pays the rent nor gives up possession his goods and chattels will be liable to seizure, and will be sold to pay the rent in arrear and costs.

5. The notice may be in the following form or to the like effect :

Take notice that I claim \$            for rent due to me in respect of the premises which you hold as my tenant, namely, (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me up possession of the said premises after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

This notice is given under the Act of the Legislature of Ontario, respecting distress for rent or taxes.

Dated this            day of            A.D.  
(Signed)            A.B. (*landlord*),

To C. D. (*tenant*.)

6. Service of papers under this Act shall be made either personally or by leaving the same with some grown person being in and apparently residing on the premises occupied by the person to be served.

7. If the tenant cannot be found and his place of abode is either not known, or admission thereto cannot be obtained, the posting up of the paper on some conspicuous part of the premises, shall be deemed good service.

8. No proceeding under this section shall be deemed defective or rendered invalid by any objection of form.

5. Where a landlord has by law a right to enter for non-payment of rent, it shall not be necessary to demand the rent on the day when due, or with the strictness required at common law, and a demand of rent shall suffice notwithstanding more or less than the amount really due is demanded, and notwithstanding other requisites

of the common law are not complied with : provided that, unless the premises are vacant, the demand be made fifteen days at least before entry ; such demand to be made on the tenant personally anywhere, or on his wife or some other grown up member of his family on the premises.

**6.** When growing or standing crops, which may be seized and sold under execution, are seized for rent, they may, at the option of the landlord or upon the request of the tenant, be advertised and sold in the same manner as other goods, and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

**7.** Any person purchasing a growing crop at such sale, shall be liable for the rent of the lands upon which the same is growing at the time of the sale, and until the crop shall be removed, unless the same has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall as nearly as may be be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land and to the time which the purchaser shall occupy it.

**8.** No costs shall be levied for or in respect of the seizure upon exempted goods when they may not be lawfully sold, and when sold no greater sum in all than \$2, and actual and necessary payments for possession money, shall be levied or retained for or in respect of costs and expenses of sale of such exempted goods.

**9.** When the sum to be levied by distress for rent or for any penalty exceeds the sum of \$80 no further charges shall be made for in respect of costs or expenses by any person making the distress or employed in doing any act in the course of such distress than such as are set forth in Schedule A of the Act entitled *An Act respecting the costs of levying distresses for small rents and penalties*, than the following, that is to say :

- (a) the actual expenses or outlay reasonably incurred in removing the goods distrained or part thereof when such removal is necessary ;
- (b) Advertisement when necessarily published in a newspaper \$2.50 ; but not exceeding \$5.00.
- (c) If any printed advertisement otherwise than in a newspaper \$1.00 ; but not to exceed \$3.00.
- (d) The sum of \$1.00 per day for man keeping possession, in lieu of 75 cents per day.
- (e) Where the amount due shall be satisfied in whole or in part, after seizure and before sale, the bailiff or person seizing shall be entitled to charge and receive but three per cent. on the amount realized, in lieu of five per cent., and no more.

**10.** Any person who offends against section 8 or 9 of this Act shall be liable to the penalties provided by section 2 of *The Act respecting the costs of levying distresses for small rents and penalties*, and the proceedings may be had and taken for the punishment of the offender and the imposition and collection of such penalties as are provided by section 2 and subsequent sections of said last-mentioned Act. Section 8 and the subsequent sections of this Act shall be read with and as part of the said Act,

**11.** The person whose goods are distrained or the person authorizing the distress, or any other person interested may, upon giving two days' notice in writing have the costs of the bailiff or other person making the distress and the disbursements charged taxed by the clerk of the Division Court within whose division the distress has been made.

**12.** The bailiff or person so making the said distress shall furnish the said clerk with a copy of his said costs, charges and disbursements for taxation at the time mentioned in the notice or at such other time as the said clerk may direct, and in default of his so doing he shall not be entitled to any costs, charges or disbursements whatever.

**13.** The clerk upon such taxation shall, amongst other things, consider the reasonableness of any charges for removal, keeping possession, and for advertising, or any sums alleged to have been paid therefor, and may examine either party on oath touching the same. The person requiring the taxation shall pay the clerk a fee of twenty-five cents therefor.

**14.** Where that portion of the bill or charges in dispute amounts to the sum of \$10, either party may, on giving two days' notice, have the taxation revised by the clerk of the county court. He shall be paid a fee of fifty cents for such revision by the person appealing, and it may, in the discretion of the clerk, be deducted from or added to the bill as finally taxed by him.

**15.** In any proceedings taken under section 2 of *The Act respecting the costs of levying distresses for small rents and penalties* the taxation shall not be received as conclusive evidence,

**16.** Sections 1, 2, 3, 4 and 8 shall apply only to tenancies created after this Act shall come into force.

**17.** This Act shall come into force on the first day of October, 1887.

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